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FEDERAL RANGE CODE
As Amended ~~June 26, 1936~~ Aug 31, 1938
Sept 23 1942
August 31, 1949
January 3, 1951
December 23, 1955
January 1962

TAYLOR GRAZING ACT
As Amended through Sept. 1, 1955

TRESPASS HAND BOOK
April 1950

IDAHO CODE
As Amended through 1947
Title 25 - Chapter 12 - - Brands
Chapter 21 - - Stallions roaming at large
Chapter 21 - - Bulls
Chapter 22 - - Trespass of animals
Chapter 23 - - Estrays
Chapter 24 - - Herd Districts
Title 62 - Chapter 207 - Assessment for Taxation

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DISTRICT GRAZIER

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICIAL FILE
GRAZING SERVICE
REGION 3

Federal Range
Code.

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UNITED STATES
DEPARTMENT OF THE INTERIOR
GRAZING SERVICE

Code of Federal Range

THE FEDERAL RANGE CODE

Pursuant to the authority vested in the Secretary of the Interior by the act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315 et seq.), as amended, commonly known as the Taylor Grazing Act, the following rules and regulations, known as the Federal Range Code, are prescribed for the administration of grazing districts:

Sec. 1. Introductory; Basic Policy and Plan of Administration.

(a) Purposes; General Requirements. Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promote the highest use of the public lands within grazing districts which have been or hereafter are established, possession of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the public domain will be required of all users.

(b) Preference Applicants. Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner hereinafter provided. Provision will be made for other applicants so far as Federal range remains available.

(c) Permits; Temporary Licenses; Termination; Revocation. Permits within the meaning of section 3 of the act may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing, a recommendation thereon made by the advisory board, and approval thereof given by the district or regional grazier. No such agreement will be approved by either officer unless it appears that it is fair and that it represents a substantial compliance with the provisions of the Federal Range Code, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. During the period prior to the issuance of permits, the

See Sec.

issuance of temporary licenses will be continued. Upon the issuance of a permit within any district or portion thereof, any outstanding license or part thereof which has been granted on the basis of the qualifications on which the permit is based will be terminated. Licenses and permits will be revocable for violations of the terms thereof or for a violation of any provision of the Federal Range Code, as hereinafter provided. (Secs. 2, 3, 48 Stat. 1270; 43 U.S.C. 315a, 315b)

Sec. 2. Definitions. Wherever used in rules, instructions, or interpretations issued by the Grazing Service, unless the context otherwise requires:

(a) The act means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315--315m, 315n--315o-1), and all amendments thereto.

(b) The Federal Range Code means all of the rules and regulations pertaining to the administration of grazing districts.

(c) Federal range means land owned, leased, or otherwise controlled by the United States and administered by the Grazing Service, Provided, That land under the control of another agency and administered by the Grazing Service under cooperative agreement may be excluded from the scope of this definition by the agreement.

(d) Property means privately owned or controlled land or water used in range livestock operations.

(e) Base property means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(f) Forage land means land the principal use of which is the production of natural or cultivated feed for livestock.

(g) Land dependent by use means forage land which is of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the 5-year period immediately preceding June 28, 1934 (hereinafter referred to as the "priority period"), was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years in connection with substantially the same part of the public domain, now part of the Federal range, except that in any area placed within a grazing district after June 28, 1938, or in any area added to an existing grazing district after that date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be, Provided, That in any case in which a livestock operation used a base property or properties during the priority period in such manner as would, in the absence of other factors, serve to invest the property with the attribute of dependency by use, but such livestock operation subsequently ceased using such property or properties and used other base property or properties in such manner as to invest them also with dependency by use, only the latter property or properties shall be considered as dependent by use unless the former are dependent by use by reason of use by another livestock operation, Provided further, That in no event shall any land be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year from the date when the public land used in creating the dependency by use first became a part of a grazing district, except that in cases in which the lands used in creating dependency by use of a base property became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date.

The extent of the dependency by use of land shall be subject to the following:

(1) The dependency by use in no event shall exceed the average annual amount of forage that was customarily and properly utilized by the livestock operation during the priority period on that part of the public lands which, at the time of the issuance of the license or permit, is Federal range.

(2) In the event that the area of Federal range which was used in creating the dependency by use is diminished by withdrawal, appropriation, selection, or otherwise, the dependency by use shall diminish proportionately.

(3) Whenever dependency by use of more than one base property was created by the use of all or a part of certain range which was used jointly or at different seasons of the year by one or more other livestock operations in such a manner as to invest another base property or properties with the attribute of dependency by use, the relative dependency by use of each of the properties shall be proportionate to the average annual use made of the range by each of the operations.

(h) Land dependent by location means forage land which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(i) Animal-unit month, as applied to lands that are base properties, means the amount of natural or cultivated feed necessary for the complete sustenance of one cow for a period of one month; as applied to Federal range, it means that amount of grazing privileges represented by the grazing of one cow for a period of one month. For the purpose of this definition, one cow will be considered the equivalent of one horse or five sheep or five goats.

(j) Carrying capacity means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(k) Full-time water means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(l) Prior water is water which, during all or a substantial part of the five-year period immediately preceding June 28, 1934 (hereinafter referred to as the "priority period"), was used to service certain public range within the service area of the water for a livestock operation that was established, permanent, and continuing, and which, during the period of such use, normally involved the grazing of livestock on the same areas of public land for a certain period or periods of each year, except that in any area placed within a grazing district or added to an existing district after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be, Provided, That in any case in which a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, serve to invest such water with the attribute of priority, but such livestock operations subsequently ceased using such water or waters and used other water or waters in such manner as to invest them also with priority, only the latter water or waters shall be considered as prior unless the former are prior because of use by another livestock operation, Provided further, That in no event shall any water be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district, except that in cases wherein such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

The extent of the priority of water shall be subject to the following:

(1) The priority in no event shall exceed the average annual amount of forage that was customarily and properly utilized by the livestock operation during the priority period on that part of the lands within the service area which, at the time of the issuance of the license or permit, is Federal range..

(2) In the event that the area of Federal range which was used in creating the priority is diminished by withdrawal, appropriation, selection, or otherwise, the priority of the water shall diminish proportionately.

(m) Service area means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors, will be considered.

(n) Free-use applicant means an applicant who resides in the immediate neighborhood of Federal range and who owns livestock kept for domestic purposes. "Livestock kept for domestic purposes" means livestock whose products are consumed or whose work is used directly and exclusively by the family of the applicant. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

Sec. 3. Qualifications of Applicants.

(a) Definition of Qualifications. An applicant for a grazing license or permit is qualified if engaged in the livestock business and

(1) Is a citizen of the United States, or

(2) Has filed a declaration of intention to become a citizen, Provided, That an applicant who has filed such declaration but has not filed a petition for naturalization before a court of competent jurisdiction within seven years from the date of filing the declaration or, having filed such petition, has failed to attain citizenship within a reasonable time thereafter and is unable to show any satisfactory reason for such failure, shall be disqualified to receive a license or permit or any renewal thereof until he has actually attained citizenship, and any existing license or permit held by such person shall become void at the end of the grazing season during which the disqualification arises, or

(3) Is a group, association, or corporation which is authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, and the controlling interest in which is vested in a citizen or citizens or persons who would be qualified as individual applicants under (2), next above.

(b) Effect of Disqualification Arising Through Operation of Law. Notwithstanding the above provisions of this section, the acquisition of rights in base property by an unqualified applicant through operation of law or testamentary disposition will not affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, to the extent based on such property, for a period of two years after such acquisition. (Sec. 3, 48 Stat. 1270; 43 U.S.C. 315b)

Sec. 4. Classification of Base Properties. For the purpose of determining the proper use of the base properties of all applicants and their relative dependence upon the Federal range, land and water conditions and other factors affecting livestock operations in the area will be considered and determined according to customary use and best practices for good range management. Base properties will be classified as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

(Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

Sec. 5. Rating and Classification of Federal Range.

(a) Carrying Capacity; Seasons and Maximum Annual Period of Use. For the purpose of stabilizing the livestock industry, determining the proper use of the Federal range, and other purposes, the carrying capacity of each administrative unit or area in a grazing district will be rated, and each will be classified for the proper season, or seasons, if necessary, of its use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range lying therein during any one year.

(b) Wildlife; Allowance for Maintenance. In each grazing district a sufficient carrying capacity of Federal range will be provided, following consultation with and the advice of wildlife interests, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) Segregation of Ranges for Particular Kinds of Livestock. When the proper use of the Federal range or an orderly administration of the act requires it, certain areas may be designated for use exclusively by a certain kind or class of livestock. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

angus pasture
steer etc.

Sec. 6. Issuance of Licenses and Permits.

(a) Free-use Licenses and Permits. Free-use licenses or permits first will be issued to free-use applicants for not to exceed the number of livestock kept for domestic purposes. Such livestock shall be grazed on Federal range in the immediate neighborhood of the residence of the licensee or permittee. (Sec. 5, 48 Stat. 1271; 43 U.S.C. 315d)

(b) Regular Licenses and Permits; Order of Issuance; Number of Livestock. Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(1) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(2) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

(3) To other applicants, licenses or permits for the number of livestock for which range is available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

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After licenses or permits have been issued on the basis of the foregoing, any licensee or permittee may, within the discretion of the district grazier, and on written order by him, be allowed to use the amount of Federal range grazing privileges represented by his license or permit over any period of time within the season or seasons for which the Federal range is classified as proper for use, Provided,

(1) Such period does not exceed the maximum period of time for which any licensee or permittee is allowed to use the Federal range during any one year;

(2) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(3) Such use will not be detrimental to the Federal range; and

(4) Such use will not adversely affect other licensees or permittees. (Sec. 3, 48 Stat. 1270; 43 U.S.C. 315b)

(c) Terms and Conditions. The issuance and continued effectiveness of all regular licenses and permits will be subject to the following conditions and requirements:

(1) No license or permit will be issued to any applicant unless he is able to show that he possesses adequate feed to support his licensed or permitted livestock during the period of time for which they are to be off the Federal range.

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(2) No license or permit will provide for the grazing of livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the carrying capacity of the range to be used.

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately.

(6) If at any time during the life of a license or permit the holder thereof ceases to make substantial use of his base property in connection with his year-round livestock operation, the license or permit will be subject to a proportionate reduction.

Ties up with Sec. 7

(7) If at any time during the life of a license or permit the holder thereof loses ownership or control either of all or a part of his base property or of all or a part of such other lands or grazing privileges as are necessary to his year-round livestock operation, and fails within a reasonable time, as directed by the district grazier after submission of the matter to the advisory board for recommendation, to obtain ownership or control of other base property, lands or grazing privileges sufficient to insure such a year-round operation, the license or permit will be subject to a proportionate reduction.

Reduction for Range protection see Sec. 8

(8) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

See Sec. 8(d)

(9) In the event of failure for any two consecutive years either to offer a base property in an application for a license or permit, or to accept a license or permit offered pursuant to such an application, such base property will lose its dependency by use or priority.

(10) A revocation of a license or permit because of a violation of any of the provisions of the Federal Range Code may result in the loss of the dependency by use or priority of the base property upon which the license or permit is based. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

(d) Applicants Having More Than One Class of Property; Reductions; Allotments; Agreements. Nothing herein contained will prevent an applicant who owns or controls properties in more than one class from having such properties considered separately in the order and manner set forth in this section. If necessary to reach the carrying capacity of any parts of the Federal range after licenses or permits have been issued, reductions on an equal percentage basis will be imposed on licensees or permittees so far as their grazing activities involve the use of such parts. Reductions in all cases will be made by reducing the numbers of livestock or the time on the Federal range area involved, or by both methods, Provided, That the regional grazier may recommend, for the approval of the Secretary of the Interior, a limit below which no license or permit in that area will be reduced. Allotments of Federal range will be made to licensees or permittees when conditions warrant, and divisions of the range by agreement or by former practice will be respected and followed where practicable. Increases in carrying capacity will be participated in by existing licensees and permittees to the extent of their respective qualifications. Licenses or permits to use any range available thereafter may be granted to other applicants. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

See Sec. 1

(e) Administration of Lands Additionally Available. Any land added to a grazing district, or otherwise made available for administration by the Grazing Service, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315m-1--315m-4), the revocation of a withdrawal, or the cancelation or relinquishment of a homestead entry or claim, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management. (Secs. 2, 3, 48 Stat. 1270; 43 U.S.C. 315a, 315b) (52 Stat. 1033; 43 U.S.C. 315m-1--315m-4)

(f) Suspension of Licenses and Permits under Soldiers' and Sailors' Civil Relief Act of 1940. Any licensee or permittee who enters military service, as defined in section 101 (1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U.S.C. 511 (1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the regional grazier an application, in triplicate, the original of which shall be sworn to before a notary public or other officer authorized to administer oaths in the State in which the applicant resides, or before the officer in immediate command and holding a commission in the branch of the Service in which the applicant is engaged, which shall set forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one region a separate application shall be filed with the regional grazier for each region.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner terminated upon further application to the regional grazier by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, such a temporary license shall be revocable as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the regional grazier on an application for suspension or termination of a license or permit may be appealed by the applicant, licensee, or permittee to an examiner of the Grazing Service, and from his decision to the Secretary of the Interior. The procedure in such appeals shall conform as nearly as practicable to the procedure prescribed in section 9. (Secs. 2, 3, 9, 48 Stat. 1270, 1271 ; 43 U.S.C. 315a, 315b, 315h) (Secs. 501, 507, 54 Stat. 1187, 1188; (50 U.S.C. 561, 567)

Sec. 7. Transfers of Base Properties and Licenses or Permits.

(a) Transfer of Base Property; Effect. A transfer of a base property, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if otherwise properly qualified, to all or to such part of a license or permit as is based on the property transferred, and the original license or permit will be terminated or decreased by such transfer. In any instance in which a transfer, or a different vesting in any manner, of a leasehold interest in land may result in an interference with the stability of livestock operations or with proper range management, such land will lose its dependency by use or dependency by location, as the case may be, upon a finding to that effect by the regional grazier, after reference of the matter to the district advisory board for its recommendation.

(b) Transfer of a License or Permit; Limitations; Effects; Consent of Owner or Encumbrancer. Upon application by a licensee or permittee, and after reference to the advisory board for recommendation, the district grazier may allow a license or permit based on ownership or control of land to be transferred to other land or a license or permit based on ownership or control of water to be transferred to other water within the same service area, Provided, That such transfer will not interfere with the stability of livestock operations or with proper range management and will not affect adversely the established local economy, Provided further, That no such transfer will be allowed without the written consent of the owner or owners and any encumbrancers of the base property from which the transfer is to be made, except that when the applicant for such transfer is a lessee without whose established livestock operations such property would not have dependency by use or priority, such consent will not be required. Upon the allowance of a transfer under this paragraph, the base property from which the transfer is made shall lose its dependency by use or priority to the extent of the license or permit transferred.

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(c) Transfer of Dependency by Use on Same Land. Whenever a licensee or permittee owns or controls land dependent by use which has a carrying capacity in excess of that necessary for the support of the licensed or permitted livestock during that period of the year for which they are to be kept on such land, the excess land may be disposed of or may be used for purposes other than the support of such livestock; upon application by the licensee or permittee, and after reference to the advisory board for recommendation, the district grazier may allow the dependency by use allocable to such land to be transferred to that part which continues to be used for the support of such livestock, Provided, That no such transfer will be allowed without the written consent of the owner or owners and any encumbrancers of the land from which the transfer is to be made. Upon the allowance of a transfer under this paragraph, the land from which the transfer is made shall lose its dependency by use. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

Sec. 8. Fees; Time of Payment; Refunds.

1-yr permit

(a) Free-use Licenses and Permits. No fee will be charged for the issuance of a free-use license or permit.

(b) Regular Licenses and Permits. Unless notice is otherwise given, a grazing fee of five cents per head for cattle and horses and one cent per head for sheep and goats, will be charged each regular licensee or permittee for each month of the grazing period covered by the license or permit, Provided, That a different fee may be charged in any district or unit thereof in which the carrying capacity of Federal range is increased by reason of the addition of land not owned by the United States or by reason of a cooperative agreement or memorandum of understanding between the Grazing Service and any other governmental agency, State or Federal, or any person, association, or corporation. When the grazing period involves a fraction of a month, the fees for such fraction will be prorated on the basis of a thirty-day month. All livestock six months of age or over and allowed on the Federal range will be counted, at any point of time during the grazing period, as a part of the total number for which a license or permit has been issued.

(c) Crossing Permits. Unless notice is otherwise given, a fee of one-fourth of a cent per head per day, for cattle and horses, and one-twentieth of a cent per head per day for sheep and goats, will be charged for a crossing permit, which will be issued upon application by any person showing the necessity of crossing the Federal range for proper and lawful purposes, Provided, That in cases where the trail to be used is so limited and defined that no material amount of forage will be consumed in transit the permit will be issued without charge, Provided further, That no fee will be charged for a crossing permit to the extent that it involves the use of a stock driveway created under section 10 of the stock-raising homestead act of December 29, 1916. (39 Stat. 862; 43 U.S.C. 300)

payment as in 4/1-10/31

(d) Payment of Fees; Reduction or Increase in Numbers; Extension of Periods of Use. All fees for crossing permits shall be paid at the time of the issuance of the permit. Payments of fees for regular licenses or permits shall be made prior to the beginning of each grazing period shown on the license or permit. Licenses or permits will be effective only when all fees due thereunder have been paid. No license or permit shall be issued or renewed until payment of all amounts found to be due to the United States under the Federal Range Code has been made. Upon application by a transferee of any property or part thereof on the basis of which a license or permit has been issued, a new license or permit representing that part of the grazing privileges to which he may thereby become entitled shall be issued to him. In case of such transfer, the transferor shall not be entitled to a refund of any portion of the fees that have been properly paid and that are applicable to the period subsequent to the transfer.

A licensee or permittee will be required to make payment of fees in accordance with the terms of the license or permit unless he notifies the district grazier in writing, more than thirty days before the effective date of any grazing period shown, that he desires to make temporary use of the grazing privileges in a manner other than that shown in the license or permit. Such change will be allowed if due to annual fluctuations ordinarily occurring in livestock operations or to the necessity of conserving or protecting the range. When the requested change is due notify by letter

to financial reasons, such as foreclosure, or other reasons beyond the licensee's or permittee's control, it may be granted for one year or longer, after reference to the advisory board for recommendation, and the approval of the district grazier. Fee notices in each case will issue accordingly.

Read in connection with Sec. 6(c)(4)

Upon application by a licensee or permittee, and after reference to the advisory board for recommendation, the district grazier may allow an extension of the applicant's period or periods of use of the Federal range during any year or season thereof. A receipted supplemental fee notice covering the additional grazing privileges will constitute authority to use the range for the extended period.

Supplemental fall license

(e) *Refunds*. No refund of fees properly paid will be made because of a failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(1) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Secretary of the Interior will in his discretion remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period as long as the emergency exists.

(2) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be made under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U.S.C. 95, *et seq.*).

(3) When a license or permit is suspended under section 501 (2) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1187; 50 U.S.C. 561 (2)), any fees that have been paid for the period of suspension will be refunded and any fees that are or that may become due for such period will be remitted. (Secs. 3, 5, 6, 48 Stat. 1270--1272; 43 U.S.C. 315b, 315d, 315e) (Secs. 501, 507, 54 Stat. 1187, 1188; 50 U.S.C. 561 (2), 567)

Sec. 9. *Procedure in Applications, Hearings, and Appeals.*

(a) *Filing and Consideration of Applications; Recommendations; Service of Notice.* Each year the regional grazier will set a date for each district in his region prior to which all applications for grazing licenses or permits in the district must be filed. Failure to file applications before such date will result in their rejection for that year unless reasonable justification for a belated filing is shown. Whenever an application is filed for a license or permit based in whole or in part on a property which has not served as a base for a license or permit during the grazing season immediately preceding such filing, all users who might be directly affected by favorable action on such application will be notified of its filing. All applications for grazing licenses or permits, except those of district advisers, will be considered first by the advisory board of the district in which the license or permit is sought. The advisory board will make its recommendation to the district grazier and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable, the district grazier will so notify the applicant by ordinary mail. If the recommendation is to any extent adverse, notice thereof will be served on the applicant personally either by the district grazier or by such person as may have been designated by him, or by registered letter sent to the applicant at the address given in his application. Such notice will set out the reason or reasons set forth by the advisory board for the adverse recommendation and will name a place and date, not less than ten days thereafter, when protests against the recommendation will be heard.

(b) Hearing of Protests; Reconsideration by Advisory Board; Service of Notice. At the dates and places fixed for hearing protests any party in interest may appear, either in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the district grazier. If such recommendation is favorable to the applicant, and the district grazier approves, he will notify the applicant thereof by ordinary mail. If the recommendation is to any extent adverse, and the district grazier approves, a notice giving the reason or reasons therefor will be served on the applicant either personally by the district grazier or such person as may have been designated by him, or by registered letter sent to the applicant at the address given in his application. Such notices will constitute the district grazier's final decisions for purposes of appeal.

(c) Allowance or Rejection of Application by the District Grazier; Modification; Service of Notice; Appeal to Examiner; Intervention. The district grazier is vested with the authority in the light of all facts and circumstances, after first having submitted an application to the district advisory board, to issue or to refuse to issue a grazing license or permit. If the action taken by the district grazier on any application is substantially different from that recommended by the advisory board, a notice including a recital of the specific reasons for the action taken will be served on the applicant and on any other applicant or applicants adversely affected by such action, either personally by the district grazier or by such person as may have been designated by him or by registered letter sent to the applicant at the address given in his application. The notice given the particular applicant will advise him of his privilege to file an appeal to an examiner of the Grazing Service. The appeal must be filed with the regional grazier within fifteen days

appeal on points of law
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following the receipt of the notice. The appeal shall be accompanied by specifications of error setting forth in a clear and concise manner the matters upon which it is based. Any party or parties who may be directly affected by the decision on the appeal will be notified by the regional grazier of the filing of the appeal and advised that a written request to intervene in the appeal may be filed. Such a party shall be known and designated as an intervener. When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(d) Cancelation of Licenses or Permits; Service of Notice; Appeal to Examiner. Licenses or permits will be subject to cancelation to the extent that they have been improperly issued. In any case in which it shall appear to the Grazing Service that a license or permit confers grazing privileges in excess of those properly allowable under the act and the Federal Range Code, the district grazier will notify the licensee or permittee that the license or permit is thereby held for cancelation either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such cancelation should not be made final. Such notice will set forth fully the reasons for the proposed cancelation and will be served on the licensee or permittee either personally by the district grazier or by such person as may have been designated by him or by registered mail sent to the licensee or permittee at his last address of record. In case of failure of the licensee or permittee to show cause within the fifteen days allowed, the license or permit will be canceled to the extent indicated in the notice. The district grazier will consider any cause shown and, if satisfied of its sufficiency, will close the case. If the district grazier is not satisfied that sufficient cause has been shown, he will notify the licensee or permittee that the cancelation will be made final unless an appeal to an examiner of the Grazing Service is filed within fifteen days from receipt of notice. Such notice will be served on the licensee or permittee either personally by the district grazier or by such person as may have been designated by him or by registered mail sent to the licensee or permittee at his last address of record. The appeal must be filed with the regional grazier and shall be accompanied by specifications of error setting forth in a clear and concise manner the matters upon which it is based. So far as practicable, the appeal thereafter will follow the procedure prescribed in the following paragraphs of this section, except that any decision by the district grazier or the examiner on a matter arising under this paragraph will not become effective pending the disposition of a timely appeal to the examiner or the Secretary of the Interior, as the case may be.

(e) Fixing of Place and Date for Hearing before Examiner on Appeal; Notice. Upon the filing of an appeal and specifications of error, the regional grazier will notify the Chief Examiner, naming a place within or near the district at which a hearing will be held. The Chief Examiner will then advise the regional grazier of the date of hearing, which will be not less than ten days after the date of the filing of the appeal, and the regional grazier thereupon will notify the appellant, and all parties who may be directly affected by the decision on the appeal, of the time and place of hearing, which will be held by one of such representatives of the Grazing Service as may have been designated by the Secretary of the Interior to conduct hearings. Such representative, however, shall be one other than the administrative officer from whose decision the appeal is taken. For the purpose of the hearing, such representative of the Grazing Service shall be known and designated as an examiner.

(f) Authority of Examiner. The examiner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to administer oaths, to call and question witnesses and to make findings of fact and a decision.

(g) Conduct of Hearing Before Examiner. The appellant, the district grazier, and recognized interveners will stipulate as far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented and issues which clearly appear to be unnecessary to a proper disposition of the case will be excluded, Provided, That the party asserting such an issue may state briefly for the record the substance of the proof which otherwise would be offered in support of the issue. The district grazier, or his representative, will then state the grounds of the decision from which the appeal has been taken, together with such explanation as may be deemed necessary, and may call and examine witnesses on the issues involved. Upon the conclusion of this testimony the appellant shall present his case, following which recognized interveners may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy. All oral testimony shall be under oath, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. Objections to evidence will be ruled upon by the examiner and exceptions duly noted, and such exceptions will be considered upon an appeal from the decision of the examiner. In noting an exception to a ruling sustaining an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence. The examiner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(h) Witness Fees. Under the subpoena issued a witness will be entitled to a witness fee of $1.50 per day for the time in attendance at the hearing and the time necessarily spent in travel from his residence to the place of hearing and return, plus five cents per mile for the distance necessarily traveled. Witnesses who attend hearings so far removed from their residences as to prohibit return thereto from day to day will be allowed a per diem of $3.00 for expenses of subsistence in addition to witness fees for each day of actual attendance and for each day necessarily occupied in traveling to and from hearings. A subpoena may be served only in the county in which the hearing is to be held, and a witness cannot be compelled to appear outside of such county. Claims for witness fees and mileage will be presented on Form No. 1-327, properly certified by an authorized certifying officer, and will be submitted in the usual way for payment.

(i) *Findings of Fact and Decision by Examiner; Notice; Submission to Secretary of the Interior.* As promptly as possible following the conclusion of the hearing the examiner will make findings of fact and render a decision, which shall become a part of the record in any appeal, and a copy of which shall be sent by registered mail to the appellant and all interveners, *Provided, however,* That the examiner may, before promulgating a decision, submit it to the Secretary of the Interior for consideration. Upon approval by the Secretary, it shall constitute the decision of the Department, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to move for a rehearing in the manner prescribed by the Rules of Practice of the Department then in effect.

(j) *Notice of Appeal to Secretary of the Interior; Furnishing Copies of Record.* Within ten days after the receipt of the decision of the examiner any party desiring to appeal to the Secretary of the Interior shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the appellant and to the interveners, at a charge of five cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervener is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed in the office of the Chief Examiner, Grazing Service, Salt Lake City, Utah.

(k) *Decision in Effect Pending Appeal.* Except as provided in paragraph (d) of this section, the decision of the district grazier shall be in full force and effect pending an appeal to the examiner and disposition thereof, and the decision of the examiner shall be in full force and effect pending an appeal to the Secretary of the Interior and disposition thereof. Any action taken by the district grazier pursuant to the examiner's decision shall be subject to modification or revocation by the Secretary upon an appeal from the decision of the examiner.

(1) Appeals to the Secretary of the Interior. An appeal from the decision of the examiner to the Secretary of the Interior shall be filed, together with any brief desired in support thereof, within thirty days after date of receipt of the transcript of testimony, or, in the event the transcript of testimony is not requested, such appeal shall be filed within thirty days after receipt of the examiner's decision, in the office of the Chief Examiner, Grazing Service, Salt Lake City, Utah. A copy of the appeal and any brief in support thereof must be served on each party of record, either personally or by registered mail. Any party of record opposing the appeal will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in said office a reply brief, if he so desires, a copy of which must be served upon the appellant in the same manner. Evidence of service of appeals and briefs must be furnished. The appeal in other respects shall be made in accordance with the Rules of Practice of the Department in effect at the time such appeal is taken.

No adjudication of grazing privileges will be set aside on appeal if it appears that it is reasonable and that it represents a substantial compliance with the provisions of the Federal Range Code. (Sec. 9, 48 Stat. 1273; 43 U.S.C. 315h)

Sec. 10. General Rules of the Range.

(a) Acts Prohibited. The following acts are prohibited on the Federal range:

(1) Grazing livestock upon or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit, whether regular or free-use, or a crossing permit.

(2) Grazing livestock upon or driving livestock across the Federal range, including stock driveways, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(3) Allowing livestock to drift and to graze on Federal range, including stock driveways, without a license or permit, either regular or free-use.

(4) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(5) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

new

(6) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law.

(7) Maliciously molesting, or driving from the Federal range livestock lawfully grazing thereon under an appropriate license or permit. new

(b) Rules of Fair Range Practice. The following rules of fair range practice shall be complied with by all licensees and permittees, both regular and free-use:

See Memo - M. Supervision Policy - State Sanitary Commission 1-30-48 Mr Clawson

(1) The provisions of statutory law of any State in which grazing districts are located with reference to the branding of livestock and sanitary requirements are hereby incorporated as a part of the Federal Range Code and all licensees and permittees shall comply with the provisions in effect in the State or States in which any part of the grazing district or districts in which their licenses or permits are to be effective are located.

(2) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats, and ten miles per day for cattle or horses, Provided, That an increased or decreased rate of travel may be prescribed in such permit if, in the discretion of the district grazier, the circumstances in any given case so require. new

(3) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, shall pay a proportionate share of the cost of managing livestock licensed or permitted within the range area in instances wherein associations for such management have been formed, and shall bed sheep and goats according to instructions issued by the Grazing Service. Upon request by the majority of the users of any community allotment of Federal range, the Grazing Service may prescribe the time for, breed, grade, and number of bulls to be turned onto such allotment; in the absence of such express requirements by the Grazing Service, the provisions of State law on the subject shall be regarded as applicable. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a) new

a copy to license holder

Sec. 11. Procedure for Enforcement of Rules and Regulations.

(a) Service of Notice. Whenever it appears that there has been any willful violation of any provision of the act or of the Federal Range Code, the district grazier will cause the alleged violator and any interested lien holder who has filed notice of his lien with the Grazing Service to be served with a written notice, which will set forth the act or acts constituting such violation and in which reference will be made to the provision or provisions of the act or the Federal Range Code alleged to have been violated. Such notice may be served in person or by registered mail and the affidavit of the person making personal service or the registry receipt shall be preserved.

(b) Unlawful Grazing on Federal Range; Removal of Livestock; Impoundment. Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice of his lien with the Grazing Service will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the district grazier may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(c) Amicable Settlement of Civil Cases Involving Damage to Government Property. All offers of settlement for damage to Federal range or to other property of the United States resulting from an alleged violation of any provision of the act or of the Federal Range Code will be transmitted by the regional grazier, with his recommendation, to the Director of Grazing for consideration. An offer of settlement will not constitute satisfaction of civil liability for the damage involved until finally accepted by him, and in no event will it relieve the violator of criminal liability. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered and until payment of any amount due as grazing fees has been made.

(d) Disciplinary Action for Violations. The regional grazier is authorized to reduce or revoke a grazing license or permit or to deny renewal thereof for a clearly established violation of the terms or conditions of the license or permit or for a violation of any of the provisions of the Federal Range Code. Before any license or permit is reduced or revoked, or renewal thereof denied, because of such a violation, however, the regional grazier will cause the licensee or permittee to be served with a written notice which will set forth the act or acts constituting the violation and an estimate of the amount of damage resulting therefrom. Such notice also will refer to the terms or conditions of the license or permit or to the provision or provisions of the Federal

Range Code alleged to have been violated. The notice will cite the licensee or permittee to appear before an examiner of the Grazing Service at a designated time and place to show cause why his license or permit should not be reduced or revoked and satisfaction of damages made. The notice may be served in person or by registered mail and the affidavit of the person making personal service or the registry receipt shall be preserved.

The hearing before the examiner upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The licensee or permittee may appear in his own behalf or by counsel. The evidence shall be confined to the commission of the acts charged and the amount of damages, if any, due the United States. If upon the hearing of the order to show cause the violation with which the licensee or permittee is charged is established to the satisfaction of the examiner, he will render a decision finding the amount of damages and directing the regional grazier to reduce or revoke the license or the permit, if the facts so warrant.

Upon the failure of the person served in the notice to appear at the time and place designated in the notice, and in the absence of a good and sufficient showing to the examiner of a reason for his failure to appear, the examiner may direct the regional grazier to reduce or revoke the license or permit, as the violations charged in the notice and the amount of damages alleged may warrant.

The decision of the examiner on any matters in this section shall be final unless an appeal is taken within fifteen days to the Director of Grazing, whose decision likewise shall be final unless an appeal is taken within thirty days to the Secretary of the Interior. Pending an appeal and final determination thereof the decision of the examiner or of the Director of Grazing, as the case may be, shall remain in full force and effect. Appeals to either the Director of Grazing or the Secretary of the Interior shall be filed in the office of the Director of Grazing, Salt Lake City, Utah.

(e) Bonds for Violations. Whenever a livestock operator commits a willful or wanton violation of any provision of these rules or has repeatedly committed violations, the regional grazier is authorized to require him to furnish a bond in an amount sufficient to cover all probable damage that may result from his violations during the ensuing year. The bond may be either a cash or a surety bond and will be in a form approved by the Director of Grazing. Upon the failure to furnish such bond when so required, the regional grazier is authorized to refuse to issue or renew a license or permit, or to revoke an existing license or permit. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

Sec. 12. District Advisory Boards.

(a) Authorization for Establishment; Number of Members; Qualifications. Section 18 of the act provides that there shall be an advisory board of local stockmen in each grazing district. The regional grazier will fix the number of members to be elected to such board in each district, such number to be not less than five and not more than twelve, exclusive of a wildlife representative who will not be elective but will be appointed by the Secretary of the Interior. The regional grazier may fix the number of district advisers to be elected as representatives of each class of stockmen, according to the kind of livestock owned, or may fix the number to be elected from each voting precinct established by him, or both, provided that the free-use licensees or permittees in each district will be entitled to one representative, who shall be a free-use licensee or permittee. All district advisers shall be elected in the manner herein provided and, excepting the wildlife representatives, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

Include [illegible]

(b) Elections; Time and Place of Holding; Notice. An election of district advisers will be held in each grazing district within ninety days after the publication in the Federal Register of the order establishing the district, and annually thereafter. The regional grazier may divide the district into voting precincts and will designate a voting place within each district or precinct. Notice of the time and place or places of holding an election will be given by publication in one newspaper of general circulation in the district, by posting in the office of the regional grazier and in the office of each district grazier and by posting in such other public places as may be necessary to give the matter proper publicity. No election shall be held to be invalid by reason of failure to give any of the foregoing notices unless it shall be made to appear that there was a failure to give substantial notice.

Amended 1-28-46

(c) Elections; Qualifications of Electors. Only those persons who are qualified to receive regular or free-use licenses or permits will be allowed to vote in any election held pursuant to section 18 of the act, Provided, That in any new grazing district hereinafter established and embracing areas not heretofore within any district, the electors will be those stockmen who, prior to the establishment of the district, were regularly accustomed to using the Federal range within said district. A minor may vote if otherwise qualified, Provided, That upon request by his natural or legal guardian his ballot may be cast by the guardian in the name of the minor. The judges at any election will be furnished by the representative of the Grazing Service in charge with a list of all electors entitled to vote in the district. No one whose name does not appear on such list shall be allowed to vote, Provided, That anyone claiming that his name has been erroneously omitted from the list may

Chapter III--Grazing Service

Part 501 --- The Federal Range Code

District Advisory Boards

Pursuant to the provisions of the act of June 28, 1934 (48 Stat. 1269), as amended, §501.12 (b) and (h) (section 12 (b) and (h) of the Federal Range Code) are amended to read as follows:

§501.12 District Advisory Boards.

(b) Elections; time and place of holding; notice. An election of district advisers for each grazing district will be held within ninety days after the publication in the Federal Register of the order establishing the district, and annually thereafter. The regional grazier may divide the district into voting precincts and will designate a voting place within or near each district or precinct. The district grazier will give notice of the time and place or places of holding an election in one or more newspapers of general circulation in the district or precinct. The district grazier will give notice of the time and place or places of holding an election in one or more newspapers of general circulation in the district, by posting in the office of the regional grazier and by posting in such other public places as may be necessary to give the matter proper publicity. No election shall be held to be invalid by reason of failure to give any of the foregoing notices unless it shall be made to appear that there was a failure to give substantial notice.

* *

(h) Meetings; organization. District advisory boards shall meet at any time and place within or near the district designated by the regional grazier or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the representative of the Grazing Service present, it may meet in executive session in considering applications for the granting of licenses or permits or any other business.

C. L. Forsling,
Director of Grazing.

Approved: January 28, 1946.

Oscar L. Chapman
Assistant Secretary.
(F. R. Doc. 46-1877; Filed, Feb. 1, 1946; 9:47 a.m.)

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obtain and mark a ballot which will be held uncounted until the district grazier shall have had a further opportunity to determine whether or not the party was entitled to vote. If it is found that the party was entitled to vote, his ballot shall be counted, otherwise it shall be disregarded.

(d) *Elections; Judges; Nominations; Ballots; Registration; Challenges.* The representative of the Grazing Service in charge of an election will choose three qualified electors to act as election judges. The electors present may then place in nomination the names of the candidates, *Provided*, That nominations for the representative of a given precinct must be made by one qualified to represent such precinct, but ballots may be cast for any other person qualified to represent a particular class or precinct. Voting shall be only by ballots cast personally by qualified electors and proxies will not be recognized. No elector shall receive a ballot until he has registered by signing opposite his name on the list of persons entitled to vote. Before receiving a ballot any elector may be challenged by any other elector qualified to vote in the district and thereupon the judges, or any of them, may require the elector challenged to answer such questions concerning his qualifications as a voter as may be deemed necessary. Upon his failure or refusal to answer such questions satisfactorily, he shall not be permitted to register or to receive a ballot. Each candidate may designate any qualified elector to remain within the polling places during the casting and counting of votes and the declaration of the results thereof, and such person may act as a challenger. Before any elector shall be permitted to deposit his completed ballot in the ballot box, the judges shall write "Voted" opposite his signature on the registration list.

new

(e) *Elections; Method of Voting.* Only one ballot may be cast by the holder or holders of any one license or permit, whether regular or free-use, or by a qualified elector or electors controlling any one base property. An elector eligible only for a free-use license or permit may cast a ballot for one free-use candidate only and for no other candidate. All other electors, regardless of the precincts in which they may reside or operate, shall cast one ballot each, on which shall be written the name or names of the total number of candidates to be elected in the district as representatives of the class of owners of livestock to which the elector belongs, *Provided*, That if he belongs to more than one such class he shall vote only for the candidates of the class in which he predominates in numbers of livestock, on the basis of one cow or horse being the equivalent of five sheep or goats. If a certain number are to be elected from each precinct, no ballot shall include the names of more candidates from any one precinct than are to be elected therefrom.

(f) *Elections; Close of Polls; Results; Ties; Judges' Certificate.* Polling places shall remain open on the day of the election from 2 p.m. to 5 p.m., or until those present at 5 p.m. shall have voted. Upon the closing of the polls the judges shall open the ballot box and count the votes. In case of a tie vote, a choice by lot shall be made by the judges in the presence of the tie candidates or of at least one representative designated by each such candidate for such purpose. As soon as the ballots have been counted, the judges shall make out a certificate of returns under their hands, stating the number of votes cast, the number of excess, unused or spoiled ballots, and, in both words and figures, the number of votes received by each candidate. The certificate, together with the ballots and the registration list of voters, shall be enclosed and sealed and forthwith delivered to the representative of the Grazing Service in charge of the election.

Amended 1-15-45 See Title 43.

(g) Appointment by Secretary of the Interior; Oath and Term of Office; Removal; Vacancies. No person elected as a district adviser may assume office until he has been appointed by the Secretary of the Interior and has taken an oath of office. Persons elected as district advisers at the first election after the establishment of a grazing district shall be divided as evenly as may be into three classes by lot by the district grazier. Those in class 1 shall hold office for one year, those in class 2 for two years, and those in class 3 for three years, and until their successors are elected and have qualified. Thereafter at each election the class whose term has expired shall be elected for a term of three years. The Secretary of the Interior may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or for the good of the service. Upon a vacancy occurring in the office of a district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the regional grazier, shall be transmitted to the Director, who shall consider the recommendation and, if he concurs, transmit it to the Secretary for his consideration. A person appointed by the Secretary to fill a vacancy shall hold office until the next regular election, when a successor shall be elected to serve for the remainder of the unexpired term, if any, of the member causing the vacancy. Wildlife representatives shall hold office ~~without~~ for a term of 3 years and until a successor may be appointed by the Secretary.

3 years
Changed 1-20-46

Amended 1-5-46

(h) Meetings; Organization. District advisory boards shall meet at any time and place within the district designated by the regional grazier or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the representative of the Grazing Service present, it may meet in executive session in considering applications for the granting of licenses or permits or any other business.

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TITLE 43--PUBLIC LANDS: INTERIOR

Chapter III--Grazing Service

Part 501--The Federal Range Code

District Advisory Boards

Pursuant to the provisions of the act of June 28, 1934 (48 Stat. 1269), as amended, § 501.12 (g) (section 12 (g) of the Federal Range Code) is amended to read as follows:

§ 501.12 District Advisory Boards. *** (g) Appointment by Secretary of the Interior, oath and term of office; removal; vacancies. No person elected as a district adviser may assume office until he has been appointed by the Secretary of the Interior and has taken an oath of office. Persons elected as district advisers at the first election after the establishment of a grazing district shall be divided as evenly as may be into three classes by lot by the district grazier. Those in class 1 shall hold office for one year, those in class 2 for two years, and those in class 3 for three years, and until their successors are elected and have qualified. Thereafter at each election the class whose term has expired shall be elected for a term of three years. The Secretary of the Interior may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or for the good of the service. Upon a vacancy occurring in the office of a district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the regional grazier, shall be transmitted to the Director, who shall consider the recommendation and, if he concurs, transmit it to the Secretary for his consideration. A person appointed by the Secretary to fill a vacancy shall hold office until the next regular election, when a successor shall be elected to serve for the remainder of the unexpired term, if any, of the member causing the vacancy. Wildlife representatives shall hold office for a term of three years and until a successor is appointed by the Secretary.

C. L. FORSLING,
Director of Grazing.

Approved: January 13, 1945.
Oscar L. Chapman,
Assistant Secretary.

(F. R. Doc. 45-1205; Filed, Jan. 19, 1945;
9:48 a.m.)

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Chapter III--Grazing Service

Part 501 --- The Federal Range Code

District Advisory Boards

Pursuant to the provisions of the act of June 28, 1934 (48 Stat. 1269), as amended, §501.12 (b) and (h) (section 12 (b) and (h) of the Federal Range Code) are amended to read as follows:

§501.12 District Advisory Boards.

(b) Elections; time and place of holding; notice. An election of district advisers for each grazing district will be held within ninety days after the publication in the Federal Register of the order establishing the district, and annually thereafter. The regional grazier may divide the district into voting precincts and will designate a voting place within or near each district or precinct. The district grazier will give notice of the time and place or places of holding an election in one or more newspapers of general circulation in the district or precinct. The district grazier will give notice of the time and place or places of holding an election in one or more newspapers of general circulation in the district, by posting in the office of the regional grazier and by posting in such other public places as may be necessary to give the matter proper publicity. No election shall be held to be invalid by reason of failure to give any of the foregoing notices unless it shall be made to appear that there was a failure to give substantial notice.

* *

(h) Meetings; organization. District advisory boards shall meet at any time and place within or near the district designated by the regional grazier or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the representative of the Grazing Service present, it may meet in executive session in considering applications for the granting of licenses or permits or any other business.

C. L. Forsling,
Director of Grazing.

Approved: January 28, 1946.

Oscar L. Chapman
Assistant Secretary.
(F. R. Doc. 46-1877; Filed, Feb. 1, 1946; 9:47 a.m.)

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(i) Functions and Duties of District Advisers. District advisers shall advise or make recommendations on the following matters:

(1) The carrying capacity of the Federal range in the district.

(2) Applications under the Federal Range Code, for grazing licenses or permits, either regular or free-use, Provided, That no board shall make a recommendation on an application by any of its members. Such an application shall be acted on in the first instance by the regional grazier or district grazier.

(3) Proper rules of fair range practice.

(4) Allotments of range by classes of livestock or for community or individual use.

(5) Seasonal use of the Federal range or any part thereof.

(6) Applications for the construction or maintenance of improvements on the Federal range under section 4 of the act.

(7) Any recommendations made by local associations of stockmen in the district.

(8) Reservations of carrying capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies. new

(9) Special rules for the district, within the meaning of section 15. new

(10) Any other matter which they may desire to bring to the attention of the Secretary of the Interior, or on which he may request their advice. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a) (July 14, 1939, 53 Stat. 1002; 43 U.S.C. 315o-1)

Sec. 13. Local Associations of Stockmen.

(a) Organization. Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

(b) Articles of Incorporation; Constitutions; By-laws. Such associations shall be organized as corporations "not-for-profit," if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as

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act of incorp.
charter or certified copy of it

cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the Director of Grazing before the organization of the association shall be recognized by the Department of the Interior. The by-laws of such associations need not be submitted but in any instance in which they are in conflict with the provisions of the Federal Range Code or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

(c) Powers. Such local associations should be authorized to exercise the following powers:

(1) To lease, or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

(2) To make contributions in cash, property, material, or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(3) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district, under permit issued by authority of the Secretary of the Interior.

(4) To act in an advisory capacity to the Secretary of the Interior in the administration of the Federal range lying within the district. All recommendations made by the association to the Secretary shall be subject to the provisions of the Federal Range Code and shall include the right of a hearing before an examiner of the Grazing Service on the necessity and propriety of any action recommended and of appeal to the Secretary from the examiner's findings of fact and decision.

(5) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes contemplated by the act.

(6) To enter into cooperative agreements with the Secretary of the Interior or any officer designated by him for any of the foregoing purposes or for any other purpose authorized by the act.

(d) Cooperative Agreements for Use of Lands; Obligation of All Licensees and Permittees to Share Cost. Whenever the carrying capacity of Federal range is increased by reason of the acquisition of control of any lands by the Grazing Service through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands, based on the number of livestock by which his license or permit is increased by reason of the administration of the association lands by the Grazing Service, plus any authorized association assessments for other expenses. The district grazier is authorized to refuse to issue a license or permit to any applicant or to cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such an agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges. (Sec. 9, 48 Stat. 1273; 43 U.S.C. 315h)

Sec. 14. Construction and Maintenance of Improvements on the Federal Range.

(a) Statutory Authorization. Section 4 of the act provides:

> "Fences, wells, reservoirs, and other improvements necessary to the care and management of the permitted livestock may be constructed on the public lands within such grazing districts under permit issued by the authority of the Secretary, or under such cooperative arrangement as the Secretary may approve. Permittees shall be required by the Secretary of the Interior to comply with the provisions of law of the State within which the grazing district is located with respect to the cost and maintenance of partition fences. No permit shall be issued which shall entitle the permittee to the use of such improvements constructed and owned by a prior occupant until the applicant has paid to such prior occupant the reasonable value of such improvements to be determined under rules and regulations of the Secretary of the Interior. The decision of the Secretary in such cases is to be final and conclusive."

(b) Applicants for Permits and Cooperative Agreements; Qualifications. An applicant for a permit or for a cooperative agreement or an arrangement to construct and maintain improvements of the character described in section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must satisfy the qualifications defined in section 3 (a).

(c) Applications; Form and Contents; Filing. Applications for such permits, cooperative agreements, or arrangements shall set forth the location of such improvements by legal subdivision of the public land survey, the necessity, use, cost, and description of such improvements, item by item, shall designate the time and manner of their construction, the period of use, the method of operation, protection, repair, removal, or other disposition, and shall include any other pertinent information. If an application concerns the use and maintenance of improvements constructed and owned by a prior occupant under permit issued by the authority of the Secretary, it shall include also an itemized showing of their reasonable value at the time of filing the application and other evidence that the applicant has paid this amount to the prior occupant and has obtained title to the improvements free of all encumbrances, or a clear and concise explanation of the reasons for a lack of such agreement between the applicant and the prior occupant. When necessary properly to explain the improvements and matters connected therewith, the application shall be accompanied by a sketch of the improvements with specifications and a map showing their location in the grazing district. All applications shall be made on forms provided by the Grazing Service, with such modifications as may be necessary, and shall be filed in triplicate with the district grazier, who will submit them to the advisory board for consideration and recommendation prior to transmittal to the regional grazier for action.

(d) Applications for Construction of Improvements; Consideration; Appeals. The regional grazier, following the receipt of an application concerning the construction of an improvement, together with the recommendation of the advisory board and district grazier, will act on the application and such action shall be final unless the applicant appeals to the Director of Grazing within fifteen days following receipt of notice. The decision of the Director of Grazing on any such application shall be final unless the applicant appeals to the Secretary of the Interior within thirty days. In the latter event the decision of the Secretary shall be final.

(e) Applications for Use of Improvements Owned by Prior Occupant; Procedure upon Failure to Agree. An application to use and maintain improvements constructed and owned by a prior occupant, under permit issued by the authority of the Secretary, if accompanied by the evidence of ownership provided for in paragraph (c) of this section, shall be considered in the same manner as an application for the construction of improvements. Upon the filing of such an application showing that the applicant and the prior occupant have not agreed on the value of the improvements, the regional grazier will immediately, at the applicant's expense, cause the prior occupant to be served either personally or by registered mail with a notice of the filing of the application, together with copies of the application and any accompanying papers and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing or, if the prior occupant applies within thirty days from the date of service for a hearing, in the light of such evidence as the applicant and the prior occupant may desire to present in such hearing the regional grazier will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken within fifteen days to the Director of Grazing, whose decision in the matter likewise shall be final unless an appeal is taken within thirty days to the Secretary of the Interior. In the latter event, the decision of the Secretary shall be final. Upon the failure of the prior occupant to show cause or to apply within thirty days for a hearing, the reasonable value of the improvements will be determined by the regional grazier, Provided, That in the event of such default by the prior occupant the value determined shall not be less than the amount alleged by the applicant in his application and the decision of the regional grazier in such cases shall be final. In any case when a decision has become final, payment by the applicant to the prior occupant of the amount determined and a showing that the improvements are free of all encumbrances shall be a condition precedent to favorable action on the application.

(f) Approval of Application. Upon the approval of an application concerning the construction or use and maintenance of any improvements on the Federal range by the issuance of a permit or the approval of a cooperative agreement or other arrangement, the applicant may construct the improvements or use the improvements constructed and owned by the prior occupant, as the case may be. (Sec. 4, 48 Stat. 1271; 43 U.S.C. 315c)

Sec. 15. Special Rules for Grazing Districts. Whenever it appears to a regional grazier that local conditions in any district in his region make necessary the application of a special rule on any of the matters in the Federal Range Code in order better to achieve an administration consistent with the purposes of the act, he may recommend such a rule, supported by a factual showing of its necessity, to the Secretary of the Interior for approval. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

Sec. 16. Penal Provision. Under section 2 of the act any willful violation of the provisions of the act or of the rules and regulations thereunder (the Federal Range Code), after actual notice of the existence of the provisions of such act or such rules and regulations, is punishable by a fine of not more than $500. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

Sec. 17. Saving Clause. So far as practicable, and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in section 1 (a) of the Federal Range Code, the provisions of section 6 (b) of the Code will not be applied to the prejudice of the position of anyone who on September 23, 1942, was the holder of a grazing license or permit or who on that date had pending an application therefor. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

all other provisions of new code must be met.

Sec. 18. Prior Regulations Superseded. The rules and regulations in this Part shall supersede the rules and regulations for the administration of grazing districts, known as the Federal Range Code, approved March 16, 1938, and June 22, 1938, as amended August 19, 1938, and revised August 31, 1938, and all amendments thereof and additions thereto, approved September 18, 1939, December 5, 1940, February 26, 1941, and March 12, 1942, and included in Part 501 of the Code of Federal Regulations and supplements thereto, and all special rules thereunder, except the special rules approved September 1, 1939, as amended.

RH Rutledge

Director of Grazing.

Approved: SEP 23, 1942

Harold L. Ickes

Secretary of the Interior.

Circular No. 2266

MARCH 3, 1849

GRAZING REGULATIONS for the PUBLIC LANDS

U. S. DEPARTMENT OF THE INTERIOR
Walter J. Hickel, Secretary

BUREAU OF LAND MANAGEMENT
Boyd L. Rasmussen, Director

November 1969

PREFACE

The regulations contained herein are applicable to the use, management, and protection of 178,000,000 acres public land administered under the authority and provisions of the Taylor Grazing Act of June 28, 1934, and the O&C Act of August 28, 1937, as amended and supplemented.

Part 4110, Grazing Administration (Inside Grazing Districts) is applicable to the 159,000,000 acres of grazing land administered by the Bureau of Land Management's 58 grazing districts. It provides the necessary regulations pursuant to Section 3 of the Taylor Grazing Act for intensive management of the public lands.

Part 4120, Grazing Administration (Outside Grazing Districts and exclusive of Alaska), provides regulations (pursuant to Section 15 of the Taylor Grazing Act and Section 4 of the O&C Act) for the use and management of the 19,000,000 acres of leased lands that have not been included within grazing districts.

Subpart 9239, Trespass - Grazing, provides grazing trespass regulations, including disciplinary actions resulting from the commitment of acts prohibited and violation of the rules of fair range practice.

Subpart 1853, Hearings Procedures - Grazing, provides regulations, within grazing districts, for the handling and processing of appeals.

These regulations now represent many modifications of the original regulations. Such amendments have been found necessary to meet more effectively the objectives of the Act by improving the orderly use of the land, preventing overgrazing and range depletion, and stabilizing the livestock industry dependent upon the public land.

This publication is a consolidation of the primary regulations used in the management of the public lands administered pursuant to the Taylor Grazing Act both inside and outside the statutory grazing districts and is intended to facilitate BLM operations.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—RANGE MANAGEMENT (4000)

Group 4100—Grazing Administration

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Subpart 4110—Grazing Administration (Inside Grazing Districts); General

§ 4110.0–2 Objectives.

Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promote the highest use of the public lands within grazing districts which have been or hereafter are established, possession or control of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the Federal range will be required of all users.

§ 4110.0–3 Authority.

(a) *Saving clause.* So far as practicable and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in § 4110.0–2, the provisions of this Subpart 4110 will not be applied to the prejudice of the position of anyone who on the date of approval of this part was the holder of a grazing license or permit or who on that date had pending an application therefor.

§ 4110.0–5 Definitions.

Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management in or pursuant to the Federal Range Code for Grazing Districts (this part), unless the context otherwise requires:

(a) The "act" means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315, 315a–315r), as amended and supplemented.

(b) "The Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) The "Secretary" means the Secretary of the Interior or his authorized agent.

(d) The "Director" means the Director of the Bureau of Land Management or his authorized agent.

(e) "State Director" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(f) "Federal range" means land within established grazing districts administered by the Bureau of Land Management under the Federal Range Code for Grazing Districts (this part), including the vacant, unappropriated, and unreserved public land of the United States chiefly valuable for grazing and forage crops; State, county, and privately owned land leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land.

(g) "Property" means privately owned or controlled land or water used in range livestock operations.

(h) "Base property" means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(i) "Base property qualifications" means the maximum amount of grazing privileges on Federal range properly allowable to base properties in class 1 or class 2.

(j) "Forage land" means land the principal use of which is the production of natural or cultivated feed for livestock.

(k)(1) "Land dependent by use" means forage land other than Federal range of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the "priority period", was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years of such priority period in connection with substantially the same part of the public domain, now part of the Federal range. Such land may be (i) parallel land, i.e., land of the same character, interspersed with, and grazed at the same time as the Federal range on which grazing privileges may be granted, except in those grazing districts which by special rule have excluded parallel land as base property, (ii) land of different character than the Federal range and which properly supports the permitted livestock during all or part of the period that the Federal range is closed to grazing, or (iii) a combination of these two types of land. The priority period shall be the five-year period immediately preceding June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) No land shall be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year after the date when the Federal range used in creating the dependency by use first became a part of a grazing district, except that if the Federal range used in creating the dependency by use became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date. Only the last set of base properties used during the priority period by a livestock operation can be invested with dependency by use by such operation.

(3) The extent to which grazing licenses or permits will be granted on the basis of dependency by use of land, shall be governed by the following:

(i) It shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of any two consecutive years or any three years in which use was actually made during the priority period, whichever is more favorable to the applicant, on that part of the public land which, at the time of the issuance of the license or permit, is Federal range.

(ii) It shall not exceed the amount of forage needed for the number of livestock creating such dependency by use that were customarily and properly sustained on the base property during the priority period and continue to use such property to the same extent, except that in no instance shall the use of base property be for less than the minimum period established under § 4111.2–1. The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that necessary for the proper support of the number of livestock used in creating the dependency by use (class 1) the base property, to the extent of such excess forage capacity, may be treated as dependent by location (class 2) if so qualified.

(iii) Whenever the dependency by use of two or more base properties was created by the use of all or part of the same Federal range, during the same or at different seasons of the year, by two or more livestock operations, the relative dependency by use of each of the base properties shall be proportionate to the average annual use actually and properly made of the Federal range during the priority period by each of the livestock operations.

(l) "Land dependent by location" means forage land other than Federal range, which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(m) "Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by the grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under § 4115.2–1(k)(1), the charge for one horse grazing on the Federal range for one month shall be at twice the rate charged for one cow grazing for the same period.

(n) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(o) "Full-time water" means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(p)(1) "Prior water" is water which, during all or not less than two years of the priority period was used to service certain public domain now part of the Federal range for a livestock operation that was established, permanent, and continuing, and which normally involved the grazing of livestock on the same areas of public land for a certain portion or portions of the years of such use. For the purpose of this definition the priority period shall be the five-year period immediately preceding June 28, 1934, except that in any area placed within a grazing district or added to an existing district by boundary modification after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) Where a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, have served to invest such water with the attribute of priority, but such livestock operation subsequently ceased using such water or waters and used other water or waters in such manner as to invest them, too, with priority, only the latter water or waters shall be considered as prior, unless the former are also prior because of use by another livestock operation.

(3) No water shall be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district except that when such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

(4) The extent to which grazing privileges will be granted on the basis of the priority of water shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of the years in which use was actually made during the priority period, on substantially that part of the public lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(q) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

(r) "Adjudication of grazing privileges" is the determination of the qualifications for grazing privileges of the base properties, land (§ 4110.0–5 (k)(1)) or water (§ 4110.0–5 (p)(1)) offered in support of applications for grazing licenses or permits in a range unit or area, and the subsequent equitable apportionment among the applicants of the forage production within the proper grazing season and capacity of the particular unit or area of Federal range, and acceptance by the applicants of the grazing privileges based upon the apportionment or its substantiation in a decision by an examiner, the Director, or the Secretary upon appeal. (Applicable provisions are Subpart 4111 and § 4115.2–3.)

(s) "Allotment management plan" means a program of action designed to reach specific management goals.

(t) "Grazing system" means a specific sequence of livestock grazing by designated area to accomplish management objectives.*

Subpart 4111—Awards of Grazing Privileges

§ 4111.1 Qualifications of applicants.

§ 4111.1–1 Qualifications.

An applicant for a grazing license or permit is qualified if:

(a) He is engaged in the livestock business and is a citizen of the United States or has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen or a valid petition for naturalization, or:

(b) It is a group, or association authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, all the members of which are qualified under paragraph (a) of this section; provided that the agreement or articles of association under which the association has been formed are approved by the State Director, or:

(c) It is a corporation, the controlling interest in which is vested in persons qualified under paragraph (a) of this section and which is authorized to do business under the laws of the State in which grazing privileges sought are to be exercised; provided that the articles of incorporation have been approved by the State Director.

§ 4111.1–2 Effect of transfer arising through operation of law.

The acquisition of rights in base property by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, based on such property, for a period of two years after such acquisition. Upon the failure of such person to qualify within the two year period the license or permit will be subject to cancellation in accordance with § 4115.2–1(d).

§ 4111.2 Base property qualifications and classification.

§ 4111.2–1 Minimum requirements; classification of base properties.

(a) The District Manager, after recommendation by the advisory board, shall establish minimum base property requirements as a condition of qualification for the issuance of a license or permit in each district or unit thereof, taking into consideration the availability of base properties for proper use with and their relative dependence upon Federal range, land and water conditions, and other factors affecting livestock operations in the area according to customary use and best practices for good range management.

(b) The District Manager after recommendation by the advisory board will classify base properties as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

§ 4111.3 Adjudication and apportionment of grazing privileges.

§ 4111.3–1 Mandatory requirements; rating and classification of Federal Range.

(a) *Grazing capacity; seasons and maximum annual period of use.* The District Manager, after recommendation by the advisory board, will rate the grazing capacity of each unit or area in a grazing district and will classify each for the proper seasons of use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range therein during any one year.

(b) *Wildlife; allowance for maintenance.* In each grazing district a sufficient grazing capacity of Federal range suitable for wildlife will be reserved by the District Manager after consulting with wildlife interests and the advisory board, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *Preference applicants.* Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in a livestock business, bona fide occupants or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner specified in paragraph (d) of this section. Provision will be made for other applicants so far as Federal range remains available.

(d) *Order of preference.* Licenses or permits will be issued in the following order:

(1) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(2) *Regular licenses and permits; number of livestock.* Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

§ 4111.3–2 Procedures.

(a) *Unit-wide or area-wide adjudication.* (1) The District Manager, after recommendation by the advisory board, may make a simultaneous classification under § 4111.2–1 of all offered base properties within a single administrative unit or grazing area and may allocate in a single action the available Federal range within the unit or area upon which such base properties are dependent.

(2) The District Manager shall give written notice by certified mail of such classification and allocation to the persons offering such base properties, naming a place and date not less than 30 days thereafter to file protest to the advisory board, in accordance with § 4115.2–1(b). Thereafter, and provided there is then pending a valid application for grazing privileges, the District Manager will render his final decision thereon and will allow the right of appeal to the examiner in accordance with § 4115.2–3.

(b) *Permits; annual licenses.* Grazing permits may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing; a recommendation thereon made by the advisory board, and approval thereof given by the District Manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the grazing regulations for grazing districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. The practice of issuing an annual license will be continued until such time as a permit is issued. Upon the issuance of a permit any outstanding license or part thereof which has been granted on the same qualifications on which the permit is based will terminate. Upon expiration of a term permit an annual license may be issued, pending issuance of a new term permit.

(c) *Allotments.* Allotments of Federal range will be made to licensees or permittees when conditions warrant. Division of the range by agreement or former practice will be followed where practicable, provided such division is in substantial conformity with the qualifications for grazing privileges of the respective applicants and the agreement is reduced to writing and approved by the District Manager.

(d) *Administration of lands additionally available; preference right for lands restored from withdrawal.* (1) Any land within the exterior boundaries of a grazing district made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315M–1—315M–4), by the revocation of a withdrawal, or by the cancellation or relinquishment of a homestead entry or claim, or otherwise, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management.

(2) Where public lands are restored from withdrawal and the District Manager determines that the lands are available for grazing use, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to their restoration, shall have a superior preference to the further grazing use of such lands. The preference right must be asserted and an application for license or permit, on a form approved by the Director obtainable from the District Manager must be filed with that officer not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The District Manager may issue to such applicant an annual license or a term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act. 43 U.S.C., 1952 ed., sec. 315(h).)

§ 4111.4 Adjustments of grazing privileges.

§ 4111.4–2 Increases.

Increases in grazing capacity, when conditions warrant, and after recommendation of the advisory board and approval of the District Manager, will be apportioned in a manner that will assist in the stabilization of livestock operations controlling qualified base property, with emphasis being given to the restoration of reductions that have been imposed to reach the grazing capacity of a particular allotment or range area, and to allocation of increased grazing capacity to operators or interests whose efforts were responsible for such increases.

§ 4111.4–3 Reductions.

(a) Downward adjustments will be imposed in the following order:

(1) Nonrenewable licenses.

(2) Regular licenses or permits to the extent, if any, to which they have been issued in excess of the base property qualifications or have otherwise been improperly issued.

(3) Regular licenses or permits properly issued, on an equal percentage basis.

(b) Base property qualifications will be adjusted, after licenses or permits have been issued, to the extent that such base property qualifications exceed the long-term forage production potential of any area of Federal range. Adjustments required below the forage production potential of any area of Federal range, after licenses or permits have been issued, to balance authorized use with the proper stocking rate of the Federal range, will be apportioned equitably or as agreed to among the qualified licensees or permittees and the District Manager after recommendation by the district advisory board. Such adjustments may be made either by authorizing less livestock or less time or by both methods as determined by the District Manager.

(c) When the District Manager determines that the forage production potential, with improvements, of the Federal range area is significantly greater than the present allowable stocking rate, he will issue combination active use and suspended nonuse licenses or permits for not to exceed the forage production potential, except that at his option, and after obtaining advice from the district advisory board, he may apply paragraph (d) of this section in making the adjustment. The difference between the forage production potential and the present allowable stocking rate of the Federal range area will be held in a suspense status, provided that the aggregate of authorized active use and "suspended nonuse" shall not exceed the base property qualifications of any licensee or permittee.

(d) When the District Manager, after recommendation by the district advisory board, determines that the imposition of the full amount of downward adjustment in authorized active use necessary to reach the proper stocking rate of a Federal range area would impose a serious hardship on the range users, he is not required to impose the full amount of the adjustment forthwith, but will schedule a percentage of the required adjustment during each of the three years immediately following the District Manager's determination as the circumstances in each case may warrant, except that when the total adjustment is less than 15 percent of the total authorized active use, it will be imposed forthwith in the full amount.

(e) The District Manager will notify each affected licensee or permittee by certified mail of his decision to make an adjustment in authorized active use to reach the proper stocking rate of any Federal range area and of the manner in which the adjustment is to be made. The District Manager's decision will allow 30 days from receipt thereof in which the licensee or permittee may file an appeal in accordance with § 4115.2–3 and § 1853.1 of this chapter. If no appeal is filed within the 30-day period, the adjustment will be in accordance with the District Manager's decision and no further appeal will be allowed even though the adjustment may be scheduled under paragraph (d) of this section. If any timely appeal is filed, after receipt of the District Manager's decision notice, the adjustment for the entire area of Federal range under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the ultimate decision will be applied to its full extent for the next grazing season immediately following the effective date of that decision. If, however, the final decision on the appeal is rendered within the 3-year adjustment period established by the District Manager's decision notice, the required adjustment may be apportioned over the remaining portion of that period. In the event that the orderly administration of the Federal range or other public interest so requires, any decision may be placed in full force and effect in accordance with the provisions of §1853.8(b) of this chapter.

(f) Federal range lands to be used under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of a pending or proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with Subpart 2411 of this chapter, and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Parts 1840 and 1850 of this chapter.

Subpart 4112—Management Practices

§ 4112.2 Designation of ranges for particular kinds of livestock.

The District Manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the Federal range.

§ 4112.3 General rules of the range.

§ 4112.3–1 Acts prohibited.

The following acts are prohibited on the Federal range:

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(b) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(c) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(d) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(e) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the District Manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(f) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(g) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

§ 4112.3–2 Rules of fair range practice.

All licensees and permittees shall comply with the following rules of fair range practice:

(a) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating to the branding of livestock and sanitary requirements shall be followed.

(b) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the District Manager.

(c) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the District Manager. Upon request by the majority of the users of any community allotment of Federal range, the District Manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

(d) When so requested by the State Director or District Manager, the licensee or permittee shall join with the Bureau of Land Management in preparing a fire plan which shall set forth in detail the program for prevention, control, and extinguishment of fires, including the responsibility of the licensee or permittee for action on his range allotment and on adjacent Federal range.

Subpart 4113—Supervision and Inspection

§ 4113.1 Procedure for enforcement of rules and regulations.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule. (Refer to § 9239.3–2 of this chapter for detailed enforcement procedures.)

Subpart 4114—Advisory Boards and Local Associations

§ 4114.1 Grazing district advisory boards.

§ 4114.1–1 Authorization for establishment; number of members; qualifications.

The State Director shall fix the number of members to be recommended by election for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be recommended by election, but shall be selected directly by the State Director. The State Director may fix the number of district advisers to be recommended by election as representatives of each class of stockman, according to the kind of livestock owned, or may fix the number to be recommended by election from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to recommend one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

§ 4114.1–2 Election, time and place; the general procedures.

All district advisers, except wildlife representatives, shall be recommended by election in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management, and published in the FEDERAL REGISTER. An election to recommend district advisers for appointments for each grazing district will be held within 90 days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons recommended by election for appointment at the first election after establishment of a grazing district, or at the first election during the 1964 calendar year, may be recommended for appointment and annual reappointment for a maximum period of three consecutive years; or the District Manager may divide the group, by lot, as evenly as possible into three groups to be considered as being recommended for appointment or reappointment for one year, two consecutive years, or three consecutive years respectively. Thereafter, elections will be held annually, for each group whose term of recommendation for appointment has expired, in accordance with the options set forth in the General Procedures for Grazing District Advisory Board Elections.

§ 4114.1–3 Appointment; term of office; removal; vacancies.

A person recommended by election for appointment as district adviser shall assume office only after he has been appointed by the State Director and has taken the oath of office. The State Director may, in his discretion, appoint those in group 1 for a period not to exceed 365 days; those in group 2 for an initial period of 365 days and thereafter a subsequent like period; and those in group three for an initial period of 365 days and thereafter two successive like periods. The State Director may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of the district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the District Manager, shall be transmitted to the State Director for consideration. A person selected to fill a vacancy shall be appointed for the remainder of the unexpired 365-day period, after which a person shall be recommended by election for the balance of the period of recommendation at the next regular election. The wildlife representative will be appointed by the State Director for a term of office that does not exceed 365 days.

§ 4114.1–4 Meetings; organization.

District advisory boards shall meet at any time and place within or near the district designated by the State Director or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licenses or permits or any other business.

§ 4114.1–5 Functions and duties of district advisers; limitations.

District advisers shall advise or make recommendations on the following matters:

(a) The qualifications, classification, and requirements of base property.

(b) The transfer and relinquishment of base property qualifications.

(c) The grazing capacity of the Federal range in the district.

(d) Application for all types of grazing licenses or permits, including nonuse, or extension of use: *Provided*, That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(e) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(f) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of this part.

(g) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(h) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(i) Proper rules of fair range practice.

(j) Allotments of range by classes of livestock or for community or individual use.

(k) Seasonal use of the Federal range or any part thereof.

(l) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(m) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(n) Any recommendations made by local associations of stockmen in the district.

(o) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(p) Special rules for the district, within meaning of § 4115.2–4.

(q) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

§ 4114.2 State advisory boards.

§ 4114.2–1 Membership and meetings.

The livestock members of each grazing district advisory board shall select from their number at the first meeting of the board after each election, two members and two alternates to serve on a State advisory board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State will select one of their number and one alternate to serve as a wildlife member on the State advisory board. In addition, the State advisory board will have one or more additional members, but not exceeding seven, who will represent other interests such as forestry, minerals, soil conservation, outdoor recreation, urban and suburban development, county government, and State government. Such additional members and their alternates will be selected by the State Director from nominations made by State or local government officers or organizations reflecting nonlivestock interests in the management or disposition of public lands. The time and place for meetings of the State advisory board shall be set by the State Director. The board shall select from its members one member to be chairman of the board. The co-chairman of the board shall be the State Director.

§ 4114.2–2 Functions and duties.

The State advisory boards shall consider and make recommendations on grazing, wildlife, forestry, outdoor recreation, minerals, soil conservation, urban and suburban development, and other resource administration policies or problems affecting the State as a whole. The operations of the State boards, including their meetings shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.3 National Advisory Board Council.

§ 4114.3–1 Membership and meetings.

The livestock members of each State advisory board shall select from their number, at its first meeting of each new term, one member and one alternate representing cattle and horses, and one member and one alternate representing sheep and goats, to serve on the National Advisory Board Council. The elected wildlife member or his alternate on each State advisory board will serve on the National Advisory Board Council representing wildlife interests. The State Director from each of the ten Western

States with organized grazing districts shall submit a list of nominees, selected from the nonlivestock and nonwildlife membership on the State board. From this list, and other sources as he may determine, the Secretary of the Interior or his authorized representative shall appoint members, not exceeding ten in number, to the National Advisory Board Council to represent nonlivestock and nonwildlife interests. In addition to the above membership, one member from each of the States of Alaska and Washington will be appointed by the Secretary of the Interior or his authorized representative from a list submitted by the respective State Directors pursuant to nominations made by State or local government officers or organizations reflecting interests in grazing or other uses of public lands. The Council shall select from its members one member to be chairman of the Council. The cochairman of the Council shall be an official of the Department of the Interior appointed by the Secretary of the Interior who shall set the time and place for such meetings of the National Advisory Board Council.

§ 4114.3–2 Functions and duties.

The National Advisory Board Council shall consider and make recommendations on policies and problems of a national scope related to all natural resource use and management. The operations of the National Council, including their meetings, shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.4 Local associations of stockmen.

§ 4114.4–1 Organization.

Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

§ 4114.4–2 Articles of incorporation; constitutions; by-laws.

Such associations shall be organized as corporations "not-for-profit", if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Director for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance which they are in conflict with the provisions of this part or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

§ 4114.4–3 Powers.

Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(a) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(b) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district under permit issued by the Bureau.

(c) To act in an advisory capacity in the administration of the Federal range lying within the district.

(d) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes, contemplated by the act.

(e) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

§ 4114.4–4 Cooperative agreements for use of lands; obligation of licensees and permittees to share cost.

Whenever the grazing capacity of Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the District Manager after consideration of the recommendation of the association. The District Manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

Subpart 4115—Records and Administrative Procedures

§ 4115.2 Procedures.

§ 4115.2–1 License and permit procedures; requirements and conditions.

(a) *Filing and consideration of applications; interdistrict agreements; recommendations; service of notice.* (1) Each year a date will be set by the District Manager prior to which all applications for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) All applications for grazing licenses or permits will first be presented to the district advisory board for advice and recommendation: *Provided,* That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(3) Where a grazing area or unit is located in one district, but is administered by the District Manager of an adjacent district pursuant to a formal interdistrict agreement, applications for grazing licenses or permits on such area or unit shall be filed with the District Manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the District Manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the District Manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable and the District Manager approves, he will notify the applicant by ordinary mail, which notice may be the fee billing. If the advisory board recommendation is favorable but the District Manager disagrees, notice will be served on the applicant in person or by certified mail sent to his address of record, setting forth the recommendation of the advisory board and the Manager's disapproval, together with the reason or reasons for a prospective adverse decision, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a date, not less than ten days thereafter, on or before which oral or written protest may be presented to the District Manager. If the recommendation of the board is to any extent adverse, notice will be served on the applicant in person or by certified mail sent to his address of record, setting out the reason or reasons given by the advisory board for the adverse recommendation, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a place and date, not less than ten days thereafter, when protest against the recommendation will be heard. The District Manager may also serve notice on any other applicant or applicants who may be directly affected by the adoption of the advisory board recommendation or the prospective decision of the Manager which will allow an appropriate protest. In any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may recommend that a protest meeting not be held, whereupon the District Manager may accept the recommendation of the board as its final consideration.

(b) *Protests; reconsideration by advisory boards; service of notice.* At the time and place fixed for the protest meeting, any licensee, permittee, or applicant may appear, in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the District Manager. If such recommendation is favorable to the protestant, and the District Manager approves, he will notify the protestant thereof by ordinary mail, which notice may be the fee billing. If the recommendation is to any extent adverse, and the District Manager approves, a notice giving the reason or reasons therefor will be served on the protestant in person or by certified mail, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts that serve as controlling factors. Such notice will constitute the District Manager's final decision for purposes of appeal.

(c) *Allowance or rejection of application; modification; service of notice.* The District Manager, in the light of all facts and circumstances and after reference to the advisory board, may issue or refuse to issue a grazing license or permit. When the District Manager takes an adverse action on any application, a notice including a recital of the specific reasons for the action taken will be served on the applicant in person or by certified mail. The notice will advise the applicant of his privilege to appeal to an examiner.

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of §§ 4111.1, 4115.2–1(e), 4115.2–1(k)(4), 4114.4–4 or 4115.2–5(a)(6). Except as otherwise specifically provided, in any such case or in any case in which it shall appear that a license or permit confers grazing privileges in excess of those properly allowable under this part, the District Manager will notify the licensee or permittee that the license or permit is thereby held for cancellation or reduction either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such action should not be made final. Such notice will set forth fully the reasons for the proposed action, specifically referring to the pertinent provisions of this part, and will be served on the licensee or permittee by certified mail or in person. In case of failure of the licensee or permittee to show cause within the time allowed, the license or permit will be canceled or reduced to the extent indicated in the notice. The District Manager will consider any cause shown and, if satisfied of its sufficiency, will close the case; if not satisfied as to its sufficiency, or if no cause is shown, he will notify the licensee or permittee in person or by certified mail that the cancellation or reduction will become final unless an appeal to the examiner is filed in accordance with § 4115.2–3.

(e) *Terms and conditions.* The issuance and continued effectiveness of all regular licenses and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation.

(2) No license or permit will provide for the grazing livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the grazing capacity of the Federal range to be used, as determined by the District Manager, except as may be allowed under § 4111.4–3 (c) and (d).

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(6) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately to the reduction in available grazing capacity caused by the loss of such Federal range.

(7) If a licensee or permittee for two consecutive years ceases to make substantial use of his base property in connection with his year-round livestock operation, the authorized use under such license or permit and the qualifications of the base property may be subject to reduction in proportion to the diminished use of the base property.

(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the District Manager; except that, if the licensee or permittee notifies the District Manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the District Manager shall determine; or

(ii) All or part of such other lands or grazing privileges as are necessary to his year-round operation, the license or permit will be subject to reduction in proportion to the loss of such necessary lands or grazing privileges unless the licensee or permittee notifies the District Manager within 30 days after such loss and thereafter within the time allowed by the District Manager after recommendation by the advisory board acquires ownership or control of other lands or grazing privileges sufficient to assure a year-round operation.

(9) Base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To include in an application for a license or permit or renewal thereof, the entire base property qualifications for active, nonuse, or combination of active and nonuse, except where the base property qualifications are included in an outstanding current term permit, or where the allowable use has been reduced under §§ 4111.4–3 (a)(3) and (c), and 9239.3–2(e) of this chapter.

(ii) To accept a license or permit issued pursuant to such application.

(10) The failure for any two consecutive years to make substantial use as determined by the District Manager, after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit, may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Nonuse, in whole or in part, of grazing privileges under a license or permit may be authorized by the District Manager, upon application by the licensee or permittee, after reference to the advisory board, for the following reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit in whole or in part may result in a

proportionate loss of the base property qualifications supporting such license or permit.

(13)(i) No readjudication of any license or permit, including free use license, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

(ii) The Bureau of Land Management may make adjustments in licenses and permits at any time when necessary to comply with the Federal Range Code for Grazing Districts.

(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the District Manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s), as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the District Manager.

(iii) May take necessary action to enforce the requirements under subdivisions (i) and (ii) of this subparagraph, in accordance with the provisions of paragraph (d) of this section.

(f) *Interest of Member of Congress prohibited.* No Member of or Delegate to Congress shall be admitted to any share or part of any license or permit issued under the act, or to derive any benefit to arise therefrom. (41 U.S.C. sec. 22; 18 U.S.C. secs. 431–433.)

(g) *Change in grazing season.* Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license, permit, or approved allotment management plan, may, upon a written approval of the District Manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(1) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(2) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(3) Such use will not be detrimental to the Federal range, and

(4) Such use will not adversely affect other licensees or permittees.

(h) *Exchange-of-use agreements.* Exchange-of-use agreements may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land, without payment of grazing fees, provided that during the term of the agreement the Bureau shall have the management and control of such non-Federal land for grazing purposes.

(i) *Nonrenewable licenses.* Nonrenewable licenses may be issued to nonpreference applicants only for the period specified by the District Manager and for the number of livestock for which range is temporarily available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

(j) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U.S.C. App. 511(1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the District Manager an application, in duplicate, setting forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the District Manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner terminated upon further application to the District Manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for not to exceed the period of such suspension, but upon the termination of the suspension, either by reason of the

expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, or otherwise, such temporary license shall terminate as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the District Manager on an application for suspension of a license or permit under this paragraph may be appealed by the licensee or permittee to the Director, and from the Director to the Secretary of the Interior, in accordance with the rules of practice, Part 1850 of this chapter.

(k) *Fees, payments and refunds*—(1) *Fees.* (i) Fees will be charged for the grazing of all livestock on public lands at a rate per animal unit month, except that no fee will be charged for a free-use license. Fees for any fee year, consisting of a grazing fee for use of the range and a range improvement fee, will be published as a notice in the Federal Register.

(ii) Fees will be established by the Secretary in 10 equal annual increments to attain the fair market value of range forage at the 1978 fee year. Fair market value is that value established by the Western Livestock Grazing Survey of 1966 or as determined by a similar study which may be conducted periodically to update the fee base, if deemed necessary. In addition, annual adjustments may be made for any of the 1969–78 fee years, and thereafter, to reflect current market values.

(iii) A minimum annual charge of $10 will be made on all regular licenses, permits, nonrenewable licenses, and crossing permits, except as specified in subdivision (vi) of this subparagraph.

(iv) Range improvement fees may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management and any State or Federal agency, or any person, association, corporation, or otherwise.

(v) All livestock 6 months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued, or for which an allotment management plan has been approved. No fees will be charged for livestock under 6 months of age.

(vi) Upon application filed with the District Manager, by any person showing the necessity for crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued. Charges are payable in advance at the same rate charged for regular grazing use, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

(2) *Payment of fees.* (i) No regular license or permit shall be issued or renewed until payment of all fees due the United States under these regulations have been made. Grazing privileges may be canceled or reduced, in accordance with paragraph (d) of this section, for failure to pay the required fees. Fees for regular licenses and permits are due the United States upon issuance of a fee notice and are payable in full in advance before grazing use is authorized; except that where grazing is authorized on the basis of an approved allotment management plan, which includes grazing system requirements necessary to assure proper management of the public land and its resources, the District Manager may either:

(*a*) Issue a fee notice upon termination of the grazing period authorized. The fee notice will reflect the actual grazing use made and will be payable within 30 days of the date of issuance, or

(*b*) Issue a fee notice on the basis of the normal operation detailed in the allotment management plan. Such fees are due the United States upon issuance and are payable in full in advance before grazing use is authorized. At the conclusion of the authorized grazing period the actual grazing use will be determined. A supplemental billing reflecting additional use must be paid within 30 days of issuance. A refund or credit may be made toward the following year's fees for use less than the normal operation. Ordinarily, no adjustment will be made when the amount is under $5.

(ii) Any licensee or permittee who desires a change in grazing use authorized pursuant to any of the provisions of this section must file, in advance, a written request for such change, except when in conformance with an approved allotment management plan. Upon approval of change, an adjusted billing notice will be issued.

(3) *Refunds.* No refund will be made for failure to use all grazing privileges represented by a license or permit, except that:

(i) During periods of range depletion due to severe drought or other natural causes, or in case of a general epidemic of disease during the life of a regular license or permit, fees due may be reduced in whole or in part, credited or refunded; or fee payment may be postponed for such periods so long as the emergency exists.

§ 4115.2–2 Transfers and relinquishments.

(a) *Transfer of base property; effect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if qualified under § 4111.1–1, to so much of the grazing privileges as are based thereon. Except as otherwise herein provided, the existing license or permit and the grazing privileges thereunder shall automatically and without further notice be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property; except that further grazing under the license or permit may be temporarily extended pursuant to request and notification filed in accordance with § 4115.2–1(e)(8)(i); except, also, where the transfer arises as a result of testamentary disposition the existing license or permit may continue in effect until the end of the current grazing season. Thereafter applications for renewal of a license or permit shall be filed by the heirs, devisees, executor, administrator, or personal representative, as the case may be.

(2) A transferee shall, within 90 days from the date of transfer, file with the District Manager documentary evidence of the transfer and an application on a form approved by the Director for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred. Where, however, a transfer, or a different vesting in any manner, of a leasehold interest in land or water may result in interference with the stability of livestock operations or with proper range management, upon a finding to that effect by the District Manager, after reference to the advisory board, such land or water will lose its base property qualifications and grazing privileges based thereon will be denied.

(b) *Transfer of base property qualifications; limitations; consent of owner or encumbrancer; effect.* (1) A licensee or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 4111.1–1. An application for approval of a transfer shall be filed with the District Manager on a form approved by the Director for land base or water base.

(2) Transfer of base property qualifications may be made under the following conditions:

(i) When an applicant owns or controls base land or lands having a forage production in excess of that required to support the licensed or permitted livestock, the qualifications may be concentrated on that part of the property having the forage production required by and which will continue to be used for the support of such livestock.

(ii) When such qualifications are to be transferred from land owned or controlled by the applicant, to land owned or controlled by others, the transfer will be recognized only to the extent such qualifications do not exceed the forage production of the new base property.

(iii) When an applicant owns or controls base water, the qualifications may be transferred to another adequate water source which will service the same range area.

(3) No transfer will be allowed under this paragraph if it interferes with the stability of livestock operations or proper range management, or adversely affects the local economy. No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made, except that in an application for transfer of class 1 qualifications where the applicant for such transfer is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such consent will not be required. Upon approval of the application by the District Manager after reference to the advisory board, the transfer shall be effective as of the date of filing of the application, and the base property from which the transfer is made will thereupon lose its qualifications to the extent indicated in the transfer.

(c) *Relinquishment of base property qualifications; limitation; effect.* Upon request, the district manager may accept a written relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified: *Provided,* That no such relinquishment will be accepted without the written consent of the owner or owners, if other than the applicant, and any encumbrancer of the base property, except that if the applicant is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

§ 4115.2–3 Appeals and hearings.

Any applicant whose interest is adversely affected by a final decision of the District Manager may appeal to an Examiner in accordance with § 1853.1 of this chapter. The conduct of hearings are provided for in §§ 1853.2 through 1853.6 of this chapter. Appeals to the Director will be pursuant to § 1853.7 of this chapter supplemented by Part 1840 of this chapter. An appeal from a decision of the Director may be made to the Secretary of the Interior in accordance with Part 1840 of this chapter (see § 1853.7(c) of this chapter).

§ 4115.2–4 Special rules for grazing districts.

Whenever it appears to a State Director after considering the recommendation of the district advisory board that local conditions in any district make necessary the adoption of a special rule on any of the matters in this part in order better to achieve an administration consistent with the purposes of the act, he may, recommend such a rule, supported by a factual showing of its necessity, for the approval of the Director. Such rule, if approved, shall be published in the FEDERAL REGISTER.

§ 4115.2–5 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the Federal range.* (1) *Qualification of applicants for permits.* An applicant for a permit to construct or maintain improvements under section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must be qualified under § 4111.1–1.

(2) *Applications.* Applications for such permits shall be filed in triplicate with the District Manager on a form approved by the Director.

(3) *Appeals.* The District Manager will act on the application after reference to the advisory board and such action shall be final unless the applicant or any interested party appeals in accordance with § 4115.2–3.

(4) *Assignments.* Assignments of section 4 permits shall be filed with the District Manager in triplicate on the authorized form and shall not be effective until approved by the District Manager.

(5) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* Where an application shows that the applicant and the prior occupant have not agreed on the value of such improvements owned by the latter, the District Manager will promptly, at the applicant's expense, cause the prior occupant to be served either personally or by certified mail with a notice of the filing of the application, and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or if the prior occupant applies within thirty days from the date of service for an appearance before the District Manager, then in the light of such evidence as the applicant and the prior occupant may present in such appearance, the District Manager will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken in accordance with § 4115.2–3. Upon the failure of the prior occupant to show cause or to apply within thirty days for an appearance, the reasonable value of the improvements will be determined by the District Manager but shall be not less than the amount alleged by the applicant in his application, and the decision of the District Manager in such case shall be final. In any case when a decision has become final, payment by the applicant of the amount determined and a showing that the improvements are free of all encumbrances may be required prior to favorable action on the application for use of such improvements, and on any application for grazing privileges involving the use of such improvements.

(6) *Cooperative agreements.* A licensee or permittee may enter into a cooperative agreement with the District Manager for the construction and maintenance of range improvements on the Federal range. Failure of the licensee or permittee to comply with the terms of such an agreement within a reasonable time as allowed by the District Manager may result in cancellation of the license or permit as provided in § 4115.2–1(d).

(7) *Applications for lands containing range improvements; compensation; reservation.* Public lands embraced in a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, or other public land laws, as specified in § 4111.4.

(i) When the disposal application covers land upon which range improvements have been placed pursuant to a permit authorized under section 4 of the act, the owner thereof may be required to remove the improvements; or if the improvements are of a permanent nature, the land applicant may be required to agree in writing to compensate the licensee, permittee, or other owner of such improvements located on the lands applied for an amount to be mutually agreed upon, or, if the parties are unable to agree, then in the amount and within the time for payment as determined by the District Manager in accordance with the applicable procedure under subparagraph (5) of this paragraph.

(ii) (*a*) When the disposal application covers public land upon which range improvements have been placed by the United States, or pursuant to a cooperative agreement heretofore or hereafter entered into between the Bureau and the licensee, permittee, and/or other cooperators, the disposal application will be referred by the land office manager to the District Manager for determination as to whether it may be allowed, not withstanding such improvements, and, if so, whether with or without a reservation. If the application is to be allowed without a reservation of the improvements, the applicant may be required to agree in writing to compensate for the loss of such improvements in the amounts to be mutually agreed upon and payable separately to the Bureau and to the cooperators. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. In the event of disagreement, the District Manager shall determine the total amount of compensation due, as provided in subparagraph (5) of this paragraph, and the time for payment. Such amount shall then be payable separately to the Bureau and to the cooperators entitled thereto, in proportion to the amount or value of their respective contributions in money, material, or labor, to the total cost of the improvement, as made by them under the original cooperative agreement as specified by the District Manager.

(*b*) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the District Manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Director and to the Secretary, in accordance with the rules of practice (Part 1840 of this chapter).

(iii) Under the act of July 9, 1942, as amended (43 U.S.C. sec. 315q), the holder of a grazing license or permit shall be compensated for the losses sustained by reason of cancellation of or prevention of use of authorized grazing privileges resulting from the use of lands embraced in such license or permit for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the Federal department or agency making such use. Such payment shall be deemed payment in full for such losses.

(b) *Contributions for administration, protection, and improvement of public lands.* The District Manager may accept contributions under section 9 of the act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction in the States.

(1) Any individual, association, corporation, grazing district advisory board, State or local body or private group, may enter into an agreement with the District Manager with respect to such contribution. Where the contribution is to include money, the contributor should execute the appropriate form as requested by the District Manager.

(2) Contributions may be conditioned upon their use for specific projects or in specific localities.

(3) The District Manager may authorize refund of any amounts deposited in excess of the contributor's proper share of the expense incident to the purpose for which the contribution was made.

§ 4115.2–6 Pledge of licenses and permits as security loans.

(a) A license or permit may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the licensee's or permittee's livestock operations. Before making a loan, a lending agency may obtain from the District Manager a written statement concerning the status of the grazing license or permit and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) A borrower-permittee desiring an extension of the term of his permit may file a request therefor, in writing, with the District Manager, setting forth the name of the lending agency, purpose and amount of loan, and the need for the extension of the permit term. When it appears that such extension will be in accordance with applicable law and regulation and not contrary to the public interest, the District Manager, in his discretion, may extend the permit for a period not to exceed 10 years from the date of the loan, subject to the rules and regulations then in force and to such additional terms and conditions as the District Manager may provide. The provisions of this paragraph shall not be applicable to grazing licenses which are issued annually on a temporary basis prior to the issuance of term permits.

(c) If the base property to which the grazing privileges on the Federal range covered by the pledged license or permit are attached as a grazing unit is acquired by the lending agency through foreclosure or otherwise, such agency, or purchasers, lessees, or occupants of the property authorized by such agency, if qualified, may apply to be recognized as the successor licensee, or permittee. If in selling the property the lending agency takes back a mortgage on the base property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files with the District Manager notice that it has made a loan and has accepted a grazing license or permit as security therefor in conformity with the provisions of this section, the District Manager as a matter of cooperation will keep such agency advised of any adverse action affecting the license or permit, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the District Manager or the Bureau or any of its employees.

Group 9200—Protection

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

§ 9239.3 Grazing.

§ 9239.3–2 Inside grazing districts.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule.

(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the District manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the District manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of this part or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the District manager he will close the case; if satisfactory showing is not made within the time allowed, the violations alleged in the notice will be deemed to have been wilful and the District manager will notify the State Director thereof for further action under paragraph (e) of this section.

(b) *Violations clearly wilful; special circumstances.* Whenever it appears to the district manager that a violation is clearly wilful, grossly negligent, or repeated, or when the public health, safety, or interest requires, or when disciplinary action is advisable, the district manager will refer the matter directly to the State Director for further action under paragraph (c) or (e) of this section, whichever is appropriate.

(c) *Unlawful grazing on the Federal range; determination of damages; removal of livestock; impoundment.* (1) Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice on his lien with the District manager will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(2) Where the owner of the trespassing livestock, or his representative, is known, the district manager shall make a determination of the damage to the Federal range and other property of the United States and shall make a demand for payment upon the alleged violator, setting forth the foregoing values including the value of the forage consumed. Where the trespass grazing is not deemed to be clearly wilful the forage value shall be computed at the rate of $2 per animal unit month, or at the commercial rate if such rate is the higher; if the district manager deems the trespass grazing to be clearly wilful, grossly negligent, or repeated he shall compute the forage value at $4 per animal unit month, or at twice the commercial rate if such amount is the higher.

(3) In any case where neither the owner of the trespassing livestock, or his representative, is known, or where conservation of the Federal range and of the forage thereon requires it, the district manager, when so authorized by written order of the State Director, may take steps to remove the trespassing livestock by such methods and by such means not inconsistent with legislation which prohibits the use of airborne or motor-driven vehicles in the gathering of horses or burros, as may be necessary, and to dispose of them by sale or otherwise within not less than five (5) days after public notice of his intention to make such disposition, subject to the right of any owner or registered lienholder of such trespassing livestock to redeem the livestock within such nondisposal period upon payment of:

(i) The damage to the Federal range and other property of the United States.

(ii) The cost of such impoundment and removal.

(iii) The value of any forage consumed as determined in accordance with subparagraph (2) of this paragraph.

(4) If the amounts found to be due the United States in accordance with subparagraph (3), subdivisions (i), (ii), and (iii) of this paragraph are contested

by the owner of the livestock, his representative, or lienholder, the trespassing livestock may be redeemed by the posting of a cash or corporate surety bond in lieu of immediate payment. Such bond will be adequate to insure full satisfaction of the claims made. A hearing will then be scheduled before an examiner of the Bureau of Land Management. The hearing will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence will be confined to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass. The examiner will render a written decision assessing the amounts due.

(5) Where conservation of the Federal range and the forage thereon requires it, the State Director may temporarily close a grazing district or any portion thereof, to grazing by any class of livestock to be specified in such order. Notice of the order shall be published in a local newspaper and shall be posted at the County Courthouse of the County in which the closed area lies. The order shall require all owners of livestock affected thereby, to remove such livestock from the area within not less than five days from date of publication of the notice. Thereafter the District manager shall proceed to impound, remove, and dispose of, in the most humane manner in accordance with the provisions of this paragraph any such livestock trespassing or grazing in violation of the closing order.

(d) *Amicable settlement of civil cases involving unauthorized use of the Federal range or damage to Federal property.* Offers of settlement for the value of the forage consumed in trespass as determined in accordance with paragraph (c) (2) of this section and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provisions of the act or of the Federal Range Code for Grazing Districts in the amount of $2,000 or less may be accepted by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for the consumed forage and damage involved until finally accepted by the district manager or the State Director. Satisfaction of civil liability tdoes not relieve the alleged violator of any criminal liability under Federal law. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Director that disciplinary action is advisable because of a wilful, grossly negligent, or repeated violation, he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit and the section or sections of the Federal Range Code for Grazing Districts, or of the Act alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the value of the forage consumed, as determined in accordance with paragraph (c)(2) of this section. The notice will cite the license or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license, permit, or base property qualifications should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

(2) The hearing upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, including the value of any forage consumed, due the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages, including the value of any forage consumed, as determined in accordance with paragraph (c)(2) of this section, and directing the district manager to suspend, reduce, or revoke the license, permit, or base property qualifications or to deny renewal, if the facts so warrant.

(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a willful or wanton violation of any provision of this part or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the District manager may refuse to issue or renew a license or permit, or the State Director may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of this subpart or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary of any matter under § 9239.3–2 shall be made in accordance with the applicable provisions of § 4122.2–5 of this chapter and Appeals and Contests Parts 1840 and 1850 of this chapter.

Group 1800—Public Administrative Procedures

PART 1850—HEARINGS PROCEDURES

(Note: Subpart 1853 consists of special hearings procedures for "Inside Grazing Districts")

Subpart 1853—Grazing Proceedings (Inside Grazing Districts)

1853.1 Appeal to hearing examiner; motion to dismiss.
1853.2 Time and place of hearing; notice; intervenors.
1853.3 Authority of examiner.
1853.4 Service.
1853.5 Conduct of hearing.
1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.
1853.7 Appeals to the Director and the Secretary.
1853.8 Effect of decision suspended during appeal.
1853.9 Conditions of decision action.

§ 1853.1 Appeal to hearing examiner; motion to dismiss.

(a) Any applicant whose interest is adversely affected by a final decision of the district manager may appeal to an examiner by filing his appeal in the office of the district manager within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the decision of the district manager is in error. All grounds of error not stated will be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the examiner.

(b) Any applicant for a grazing license or permit or any other person who, after proper notification, fails to protest or appeal a decision of the district manager within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in such final decision.

(c) When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(d) The district manager will promptly forward the appeal to the State Director. Within thirty days after his receipt of the appeal the State Director may file on behalf of the district manager a written motion, serving a copy thereof upon the appellant, requesting that the appeal be dismissed for the reason that it is frivolous, the appeal was filed late, the errors are not clearly and concisely stated, the issues are immaterial, the issue or issues were included in a prior final decision from which no timely appeal was made, or all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The appellant may file a written answer within twenty days after service of the motion upon him. The appeal, motion, the proofs of service, and the answers will be transmitted to the examiner, who shall rule on the motion, and, if the motion is sustained, dismiss the appeal by written order.

§ 1853.2 Time and place of hearing; notice; intervenors.

At least thirty days before the date set the district manager will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the district manager may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the examiner as an intervenor in the appeal.

§ 1853.3 Authority of examiner.

(a) The examiner is vested with the duty and general authority to conduct the hearing in an orderly, impartial and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a decision. The examiner shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by § 1850.0–7, to the extent such regulation is applicable.

(b) The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with § 1852.3–3, and when the ends of justice will be served thereby. Continuances will not be granted unless they are clearly justified and timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the district manager and on other parties. The district manager and other parties shall have five days from receipt of the request to file objection to the continuance. The examiner will then rule on the request, and, if granted, set a new date for the hearing. The district manager will notify all interested persons of the new date.

§ 1853.4 Service.

Service of notice or other documents required under this subpart shall be governed by § 1850.0–6(e). Proof of such service shall be filed in the same office where the notice or document was filed within fifteeen days after such service, unless filed with the notice or document.

§ 1853.5 Conduct of hearing.

(a) The appellant, the State director or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented. Issues which appear to the examiner to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the State director or his representative, unless the examiner rules that such issue is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties.

(b) Unless the examiner orders otherwise, the State director or his representative will then make the opening statement, setting forth the facts leading to the appeal (or issuance of the show cause order where that is involved). Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the examiner, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under this subpart as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the examiner.

(c) In the absence or upon denial of such motion the State Director or his representative and recognized intervenors may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every ruling of the examiner will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the opposing party may then make an offer of proof in rebuttal. The examiner will summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

§ 1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.

(a) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law unless waiver has been stipulated, and will render a decision upon all material issues of fact and law presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any further appeal. A copy of the decision shall be sent by certified mail to the appellant and all intervenors, or their attorneys of record.

(b) The Director may require, in any designated case, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by Subpart 1844.

§ 1853.7 Appeals to the Director and the Secretary.

(a) *Notice of appeal to the Director; furnishing copies of the transcript.* Within ten days after the receipt of the decision of the examiner any party, including the State director or his representative, desiring to appeal to the Director shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the State director without charge, and to other appellants and to the intervenors, at a charge of ten cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervenor is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed through the office of the Hearing Examiner.

(b) *Appeals to the Director.* An appeal from any decision of the examiner shall be filed in the Office of the Director, Bureau of Land Management, Department of the Interior, Washington, D.C., 20240, together with any brief in support thereof, within thirty days after date of receipt of the transcript of testimony, or, if the transcript is not requested, within thirty days after receipt of the examiner's decision. Within the same period a copy of the appeal and of any brief must be served on each party named in the examiner's decision, and upon the State Director, either personally or by certified mail. Any party, including the State Director, opposing the appeal will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in the Office of the Director a reply brief, a copy of which must be served on the appellant(s) in the same manner and the same period. The appeal in other respects shall be made in accordance with Part 1840, except that no filing fee is required.

(c) *Appeals to the Secretary of the Interior.* An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with Subpart 1844.

§ 1853.8 Effect of decision suspended during appeal.

(a) An appeal shall suspend the effect of the decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing privileges to be granted under the current application, an appellant who was granted grazing privileges in the preceding year may continue to use such privileges pending final action on the appeal, unless the decision appealed from is made immediately effective, as herein next provided.

(b) When the orderly administration of the range or other public interest so requires, (1) the district manager may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (2) the examiner or the Director may provide in the decision on an appeal before such officer, that it shall be in full force and effect pending decision on any further appeal; (3) the Director or the Secretary may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the district manager pursuant to a decision shall be subject to modification or revocation by the Examiner, Director, or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under section 10(c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

§ 1853.9 Conditions of decision action.

(a) *Record as Basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the State Director and as supported by and in accordance with the reliable, probative and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

(b) *Effect of substantial compliance.* No adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4110 of this chapter.

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS AND EXCLUSIVE OF ALASKA); GENERAL

Subpart 4120—Grazing Administration (Outside Grazing Districts and Exclusive of Alaska); General

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Subpart 4120—Grazing Administration (Outside Grazing Districts and Exclusive of Alaska); General

§ 4120.1 Authority.

(a) Section 15 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1275, as amended, 43 U.S.C. 315m) vests discretionary authority in the Secretary of the Interior to lease for grazing purposes vacant, unappropriated, and unreserved public lands in the continental United States, exclusive of Alaska, which are not within established grazing districts.

(b) Section 4 of the O&C Act of August 28, 1937 (50 Stat. 875; 43 U.S.C. 1181d) vests in the Secretary of the Interior discretionary authority to lease for grazing purposes any revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in the State of Oregon, hereafter referred to as O&C lands, which may be so used without interfering with the production of timber or other purposes specified in section 1 of the Act, and to formulate rules and regulations for the use, protection, improvement, and rehabilitation of such grazing lands.

(c) The Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986 as amended; 43 U.S.C. 1411–1418) expressly authorizes the Secretary of the Interior to determine which of the lands exclusively administered by him through the Bureau of Land Management are suitable for retention and management under the principles of multiple use and sustained yield. Section 5 of the Act (78 Stat. 987; 43 U.S.C. 1415) defines multiple use and sustained yield.

§ 4120.2 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized agent.

(b) "Director" means the Director of the Bureau of Land Management or his authorized agent.

(c) "State Director" means the supervisory Bureau of Land Management official for the state in which the particular range lies, or his authorized agent.

(d) "Authorized Officer" means the Bureau of Land Management District Manager or Area Manager, to whom has been delegated the authority to take action.

(e) "District Office" means the Office of the Bureau of Land Management having direct management responsibility and administrative jurisdiction over the specific public lands involved.

(f) "Animal unit month" means the amount of forage necessary for the sustenance of one cow, or its equivalent for a period of 1 month.

(g) "Grazing capacity" means the total animal unit months of forage available from a tract or tracts of forage land during a given period.

(h) "Management area" means a designated tract or geographic area of land capable of being properly managed as a unit for multiple-use to ensure a sustained yield of forage without jeopardy to other resources or uses of the land. Such a management area may require joint use by two or more lessees.

(i) "Allotment management plan" means a program of action designed to reach specific management goals.

(j) "Grazing system" means a specified sequence of livestock grazing by designated area to accomplish management objectives.

(k) "Preference land" means the privately owned or controlled land upon which the issuance of a grazing lease is based.

(l) "Contiguous land" means land that borders upon or touches upon public land.

Subpart 4121—Awards of Grazing Leases

§ 4121.1 Qualifications of applicants.

§ 4121.1–1 Minimum qualification requirements.

An applicant for a grazing lease is qualified if:

(a) He is a person engaged in the livestock business, has a need for the grazing use of the land, and is a citizen of the United States[1] or;

(b) It is a group or association authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, all members of which are qualified under paragraph (a) of this section, provided that the agreement or articles of association under which the association has been formed are approved by the State Director, or;

(c) It is a corporation, the controlling interest in which is vested in persons qualified under paragraph (a) of this section and which is authorized to do business under the laws of the State in which grazing privileges sought are to be exercised: *Provided*, That the articles of incorporation have been approved by the Authorized Officer.

§ 4121.1–2 Effect of transfer arising through operation of law.

The acquisition of rights in preference land by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding lease, or preclude the renewal of a lease based upon such land, for a period of 2 years after such acquisition. Upon the failure of such person to qualify within the 2-year period, the lease will be subject to cancellation in accordance with § 4125.1–1(h).

§ 4121.2 Adjudication of applications for grazing leases.

§ 4121.2–1 Minimum requirements, rating and classification of lease land.

(a) *Land resource consideration.* The Authorized Officer will determine the availability of public land for grazing leases and the amount of forage available for use by livestock in conjunction with considerations of forage reservations for watershed protection, wildlife, and other multiple uses.

(b) *Grazing capacity, seasons of use, and maximum annual period of use.* The Authorized Officer will establish the grazing capacity, determine the kind and class of livestock use to be proper for each management area and classify each area for the proper seasons of use and for the maximum period of time for which the lessee will be allowed to use the leased land therein during any one year, except that where the leased land consists chiefly of isolated or fragmented tracts of land which are not proposed for long-term retention and management, the Authorized Officer may establish the grazing capacity only.

(c) *Applicants.* Grazing leases may be issued to qualified applicants to the extent that public land is available in the following order and amounts:

(1) To applicants who are the owners, lessees, or other lawful occupants of contiguous private lands to the extent necessary to permit proper use of such contiguous lands. When the public land consists of an isolated or disconnected tract embracing 760 acres or less, owners, lessees, or other lawful occupants of lands contiguous thereto or cornering thereon shall have a preference right to lease the whole of such tract, upon terms and conditions prescribed by the Secretary: *Provided*, That the preference right must be asserted during a period of 90 days after such tract is offered for lease.

(2) To applicants owning, leasing, or lawfully occupying noncontiguous lands to the extent necessary to permit the proper use of such noncontiguous lands.

(3) To other applicants.

(d) *Conflicting applications.* (1) When more than one qualified applicant applies for the same public land and it appears that a division of the area may be made and will not result in improper land use, the Authorized Officer will allow the applicants an opportunity, within a specified time limit which he shall set, to agree to a division of the lands. A division of the lands may be made either by agreement between the conflicting applicants which is acceptable to the Authorized Officer, or by determination of the Authorized Officer where no acceptable agreement is reached. However, where it appears that a division of the land would result in improper land use, or where proper land use management will be advanced thereby, the Authorized Officer may require that joint use be made of the management area.

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[1] See 43 CFR 1811.1 regarding evidence of citizenship status.

(2) The Authorized Officer will allocate the use of the public land on the basis of any or all of the following factors: (i) Historical use, (ii) proper range management and use of water for livestock, (iii) proper use of the preference lands, (iv) general needs of the applicants, (v) topography, (vi) public ingress and egress across preference lands to public lands under application[2] (where access is not presently available), and (vii) other land use requirements.

§ 4121.2–2 Leases of withdrawn or reserved lands, preference right leases for lands restored from withdrawal.

(a) The Authorized Officer may issue grazing leases for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[3] if the use of the land for grazing is consistent with the purposes of the withdrawal. Lands included in stock driveway and public water reserve withdrawals may be leased in accordance with subpart 2321 of this chapter. Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed for the protection and use of the land for the purpose for which it was withdrawn or reserved.

(b) Where public lands are restored from a withdrawal and the Authorized Officer determines that a grazing lease for the lands may be issued, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the land immediately prior to their restoration, shall have a superior preference right to lease the restored public lands previously used by him. The preference right must be asserted by an application for a grazing lease (see § 4125.1–1(a)(1)), and must be filed within 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior grazing lease, license, permit or other authority upon which the superior preference claim is based.

§ 4121.3 Adjustments of grazing use.

§ 4121.3–2 Increases.

Increases in grazing capacity, when determined by the Authorized Officer, will be apportioned in a manner that will assist in the stabilization of the livestock operations after consideration of other land uses.

§ 4121.3–3 Decreases.

(a) Downward adjustments in authorized grazing use may be imposed during the term of a grazing lease where, for example, the lease erroneously includes lands not subject to lease, or authorizes use in excess of the grazing capacity of the leased land, or where a downward adjustment is required to facilitate other proper multiple uses on the area, or similar situations.

(b) Adjustments to balance authorized use with the proper stocking rate of the management area will be apportioned equitably or as agreed to among the lessees and the Authorized Officer. Such adjustments may be made by authorizing fewer livestock, or a shorter grazing season, or by both methods as determined by the Authorized Officer.

(c) The Authorized Officer will notify each affected lessee by certified mail of his decision to make an adjustment in authorized use to reach the proper stocking rate of any leased area. The notice will state the manner in which the adjustment is to be made and will allow 30 days from receipt thereof in which the lessee may file an appeal in accordance with § 4125.1–3. If no appeal is filed within the 30-day period, the adjustment will be made in accordance with the decision and no further appeal will be allowed. If a timely appeal is filed, the adjustment under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the final decision will be applied to its full extent for the grazing season immediately following the effective date of the decision.

(d) Public lands under a grazing lease issued pursuant to this part are subject to classification, withdrawal, or other disposal under the Taylor Grazing Act, the O&C Act, or other applicable public land laws. Reasonable notice of a pending or proposed classification, withdrawal, or disposal which might result in a diminution of the area of the leased land will be given to the lessee, consistent with Subpart 2411 of this chapter and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Part 1840 of this chapter.

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[2] Where the United States obtains such a right-of-way, it will assume responsibility therefor to the full extent authorized by law.

[3] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of Feb. 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with principles of section 15 leases, under authority of subsection (I) of section 4, Act of Dec. 5, 1924 (43 Stat. 703, 43 U.S.C. sec. 501). Those lands withdrawn for reclamation purposes which are not subject to the cooperative agreement of Feb. 28, 1945, will upon restoration from the reclamation withdrawal, become subject to the provisions of paragraph (b) of this section.

Subpart 4122—Management Practices

§ 4122.1 Management considerations.

§ 4122.1–1 Multiple use.

All use and management practices, include grazing and the issuance of grazing leases, shall be in conformance with the concepts of multiple use and sustained yield (see 43 CFR 2410.0–5 (o) and (p)). Any public lands leased under the regulations of this part which are suitable for multiple use shall be managed for multiple use to the fullest extent possible, including provision of adequate access for the various multiple users. The Authorized Officer will negotiate for such access with the appropriate applicant(s) or lessee(s), utilizing Department of the Interior easement or acquisition procedures. Should negotiations prove ineffective, the United States will acquire the necessary access by appropriate legal procedures.

§ 4122.1–2 Areas of limited multiple use values.

On areas of public land with limited multiple use values the Authorized Officer may issue leases based on grazing capacity of the area only, or may include livestock numbers and season and time of use. Grazing leases based on the criteria of this section are usually for isolated and fragmented tracts of public land. However, the multiple use values involved, not size of the public land area, will be the determining factor.

§ 4122.1–3 Areas of important multiple use values.

(a) On areas of public land with important multiple use values in addition to livestock grazing or where the primary use is for sustained livestock grazing, the Authorized Officer may, before the grazing lease is issued, or where an existing lease provides for the issuance of an allotment management plan, develop in cooperation with the lease applicant or lessee an allotment management plan. Such plan shall be incorporated into the lease as a part of the terms and conditions of the lease. The plan shall provide for the proper use and conservation of the public lands, at the same time providing for the lessee the maximum possible operations flexibility. The management plan will identify objectives for the allotment, a grazing system and procedures for evaluation of management.

(b) In the absence of mutual agreement between the lessee and the Authorized Officer on an allotment management plan, the Authorized Officer may, in lieu of such plan, stipulate as a condition of the lease grazing system requirements necessary to assure proper management of the public land and its resources. In such cases the Authorized Officer may issue short-term leases until such time as he determines that the grazing system requirements are adequate to assure proper multiple use management of the public land.

§ 4122.2 Designations of grazing areas for exclusive use by specified classes of animals.

When necessary for the proper use or orderly administration of a lease area, the Authorized Officer may designate certain areas for use exclusively by a certain kind or class of livestock or wildlife.

§ 4122.3 General rules of the range.

The acts prohibited and rules of fair range practice as detailed in § 4112.3–1 and § 4112.3–2 of this chapter shall apply to all leases issued under the regulations in Part 4120.

Subpart 4123—Supervision and Inspection

§ 4123.1 Procedures for enforcement of rules and regulations.

A grazing lease may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the grazing lease, or for a violation of the Taylor Grazing Act or of the O&C Act or of any of the provisions of this Part. (See § 9239.3–1 of this chapter for detailed regulations). The lease of public lands for livestock grazing under these regulations in no way limits the Bureau's authority to protect the lands against unauthorized use or occupancy.

Subpart 4124—Local Associations

§ 4124.1 Local associations of stockmen.

Grazing associations formed by lessees will be recognized in accordance with regulations detailed in § 4114.4.

Subpart 4125—Records and Administrative Procedures

§ 4125.1 Procedures.

§ 4125.1–1 Leasing procedures; requirements and conditions.

(a) *Filing and action on lease applications.* (1) An application for a grazing lease shall be executed on a form approved by the Director and filed in the District Office of the Bureau of Land Management having management responsibility over the public lands applied for in the application. Proof of ownership or control of contiguous lands may be required by the Authorized Officer where the applicant seeks to assert a preference right.

(2) A service fee of $10 will be charged for all applications to lease public lands including initial applications and those made pursuant to assignments and consolidations. However, no fee will be charged for consolidations requested by the Authorized Officer or for a regular renewal of an existing lease.

(3) Applications to lease lands included in existing grazing leases, including lease renewals, must be filed not less than 30 days nor more than 90 days prior to the expiration of the current lease. An application not filed within this period

may be rejected by the Authorized Officer as not timely filed. Applications for lands not under lease may be filed at any time.

(4) A timely filed application for renewal of an existing grazing lease does not confer on the lessee any right to a renewal but will authorize the continued grazing use of the lands by the lessee in accordance with the provisions of the existing lease pending final action on the application for renewal. The fee for such extended use shall be consistent with the then current fee schedule.

(5) An application for a grazing lease must describe the lands applied for by one of the following methods: (i) By legal subdivisions, or (ii) by metes and bounds description, or (iii) by designated management area.

(6) An application for a grazing lease may include O&C lands or public lands or combinations thereof.

(b) *No right is conferred by application prior to lease.* Since the issuance of a grazing lease is discretionary, the filing of an application for lands not then under lease does not create any right in the applicant to use the lands applied for pending the issuance of a grazing lease.

(c) *Action on defective and nonallowable applications.* (1) The Authorized Officer may require any defects in an application be corrected or additional information to be furnished. The Authorized Officer may reject any application if the applicant fails to correct defects in the application or fails to provide the additional information within the time allowed, which period shall not be less than fifteen (15) days from the date of receipt by the applicant of notice of such defects or required information.

(2) The Authorized Officer shall reject the application if the land applied for (i) is in an allowed entry, (ii) is otherwise appropriated or reserved and not subject to lease under the Taylor Grazing Act or the O&C Act, (iii) is not public land, (iv) is under existing grazing lease, or (v) is of such character that livestock grazing would be detrimental to the resources or other uses of the land.

(d) *Consolidations.* A consolidation of leases held by a lessee may be requested by the lessee on a renewal application or may be required by the Authorized Officer on his own motion. The term of the consolidated lease shall be determined through negotiation between the lessee and the Authorized Officer.

(e) *Protests and appeals*—(1) *Protests.* A protest against the approval of an application for a lease should be filled in the same office where the application for a grazing lease was filed; it should describe the lands involved, contain a complete disclosure of all facts upon which the protest is based, and be accompanied by evidence of service on the applicant of a copy of the protest. The Authorized Officer will consider the protest, and will serve a copy of his decision on the affected parties in person or by certified mail, and in accordance with § 4125.1–3 will advise the protestant and other parties of their right to appeal to the Director.

(2) *Appeal by applicant.* The lease will be executed by the Authorized Officer and transmitted to the lessee only after final action action is taken on any protest or appeals which may have been filed. The applicant's signature to the lease shall constitute his acceptance of the lease as executed by the Authorized Officer. Nonacceptance of the lease does not prejudice the applicant's right to appeal.

(f) *Additional requirements and stipulations.* In addition to the provisions set forth in the standard Grazing Lease Form, the lease will provide for the multiple use requirements of the area, the number of livestock to be grazed, proper grazing seasons, allotment management plan, grazing system, reservation for authorized trailing, and any other conditions or requirements which the Authorized Officer may deem necessary and proper, except as provided under §§ 4121.2–1(b), 4122.1–2, and 4122.1–3.

(g) *Subleases.* No part of the lease land may be subleased by the lessee. The grazing on the lease area of livestock not owned or controlled by the lessee with or without the lessee's consent is prohibited.

(h) *Cancellation or reduction of leases; show cause, appeal to Director.* Leases are subject to cancellation or reduction for the lessee's failure to comply with the terms of the lease or the provisions of this part of the regulations, or in any case that a lease confers use in excess of that properly allowable. In any such case the Authorized Officer will notify the lessee that the lease is being held for cancellation or reduction in whole or in part, and will allow the lessee fifteen (15) days from receipt of the notice within which to show cause why such action should not be taken. The notice will fully set forth the reasons for the proposed action, specifically referring to the pertinent provisions of the regulations, and will be served on the lessee personally or by certified mail. The Authorized Officer will consider any cause shown and, if not satisfied as to its sufficiency, or if no cause is shown, he will notify the lessee personally or by certified mail that the lease has been cancelled or reduced as the case may be. Such decision is subject to appeal to the Director in accordance with § 4125.1–3.

(i) *Terms and conditions.* The issuance and continued effectiveness of all grazing leases will be subject to the following terms and conditions.

(1) A grazing lease will authorize grazing use not in excess of the grazing capacity available for use by livestock as determined by the Authorized Officer in accordance with § 4121.2–1(b).

(2) Grazing leases will provide for the grazing of livestock on the leased land only during that part or parts of the year for which the area has been classified as proper for use, except as provided in § 4121.2–1(b).

(3) Upon the diminution of the public land used under any grazing lease due to withdrawal, appropriation, selection, or otherwise, the lease will be adjusted proportionately to the reduced grazing

capacity and the grazing fee will be adjusted accordingly commencing with the ensuing lease year.

(4) The grazing lease will be terminated in whole or in part because of loss of control by the lessee of non-Federal lands that have been recognized as the basis for a grazing lease.

(5) The area of the leased land may be reduced if it is determined that the land is required for the protection of forest plantations or sources of community water supply; or for recreation facilities, wildlife habitat, stock driveways, roads, trails, townsites; or for other public purposes. When it is determined by the Authorized Officer that the leased land is excessive to the lessee's need or that the lessee is not making substantial use of the leased land, the Authorized Officer may cancel the lease, reduce the acreage of the grazing lease, or reduce the grazing use allowed in accordance with the provisions of § 4125.1–1(h). In the case of any such acreage reduction a proportionate fee adjustment will be made. If the entire grazing lease is cancelled, the Director may refund any portion of the grazing fees paid for the cancelled lease term.

(6) The Authorized Officer may establish the size and boundaries of a grazing lease area to facilitate the proper and effective management of the resources. In so doing, he will give consideration to seasons of use, topography, and establishment of systems of grazing and any other pertinent factors. He may determine that two or more applicants shall be authorized to use the public land within a management area.

(7) The Authorized Officer may make adjustments in grazing leases at any time when necessary to comply with these regulations for the public lands.

(8) If necessary to rehabilitate the vegetative resources on the public land, the Authorized Officer may temporarily close the leased land to grazing or reduce livestock use whenever vegetal cover is depleted due to drought, epidemic, fire or any other cause, or for rehabilitation of the area. Such action will not exclude the closed area from the grazing lease.

(9) Authorized grazing use of the leased land may be adjusted by the Authorized Officer to conform to needed refinements in the allotment management plan as a result of more accurate determinations of grazing capacity, season and area of use, class of livestock, etc. Proportionate adjustment will be made in the annual grazing fee for the subsequent grazing season.

(10) The issuance of a grazing lease does not alter or restrict the authorized public use of the leased land including, but not limited to, hunting, fishing, camping, or hiking on such lands in accordance with the laws of the United States or of the State in which the lands are located, nor may the lessee interfere in any manner with the proper exercise of such rights. Neither shall the lessee maintain locked gates, signs, or other devices which prevent or interfere with public use of the leased land. Nor shall the lessee restrict or limit prospecting, locating, developing, mining, or patenting the mineral resources in the public land; miners, prospectors, and mineral lessees of the United States and all other authorized persons shall be entitled to enter the leased land for all lawful purposes.

(11) The Authorized Officer may require the lessee, as a condition to the granting and continued effectiveness of grazing leases, to fence or to contribute an equitable share to the cost of fencing the allotted areas and the maintenance of such fences.

(j) *Change in grazing seasons.* Any lessee who desires to use the leased land for a period or periods other than those authorized by his lease may, upon written approval of the Authorized Officer and prior to his annual billing notice, be allowed to use the amount of his authorized grazing use during any other period of time for which the lease area is classified as proper for use: *Provided:*

(1) Adjustment in season, time, or numbers does not result in an increase in the number of animal unit months utilized;

(2) Such use will not be detrimental to the resources of the leased area; and

(3) Such use will not adversely affect other lessees.

(k) *Interest of Members of Congress prohibited.* No Member of or delegate to Congress shall be admitted to any share or part of any grazing lease issued or to derive any benefit to arise therefrom (41 U.S.C. sec. 22; 18 U.S.C. sec. 431–433).

l) *Exchange-of-use agreements.* The Authorized Officer may enter into an exchange-of-use agreement with any applicant having ownership or control of non-Federal land interspersed with and normally grazed in conjunction with the surrounding public land. The grazing use authorized, will be without payment of fees, and will not exceed the grazing capacity of such non-Federal land.

(m) *Fees for grazing leases and crossing permits*—(1) *Lease rates.* Each holder of a grazing lease will be charged annual grazing fees for the animal unit months (AUM's) authorized by the grazing lease, at a rate per animal unit month (AUM). All grazing fee billings shall be issued in accordance with the rates prescribed in subdivision (ii) of this subparagraph. All livestock six (6) months of age or over allowed on the leased area will be considered as a part of the total number for which a lease has been issued. No fees will be charged for livestock under 6 months of age.

(i) A minimum annual charge of $10 will be made on all leases.

(ii) The rate or rates per AUM for the fee year, beginning March 1 and ending the last day of February, will be established by the Director, and notice thereof shall be published in the FEDERAL REGISTER. The rate or rates will become effective as of the date of such publication and will be applied to all billing notices issued thereafter.

(2) *Crossing permits.* Upon application filed with the Authorized Officer by any person showing the necessity for crossing the public lands with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of 1 cent per head per day for cattle, 2 cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited that no substantial amount of forage will be consumed in transit.

(3) *Payment of rental fees and effect of failure to pay.* No grazing lease or renewal thereof shall be executed by the Authorized Officer until payment of all fees due the United States under the regulations in this part has been made. The first grazing fee payment must be made within 15 days of receipt of billing; if not paid within that time, the lease shall not be issued by the Authorized Officer. Upon timely payment of the first grazing fee payment, the lease will be executed and forwarded to the lessee. Subsequent annual grazing fee payments are due the United States upon receipt of the billing notice and are payable in advance of the first grazing period for the full amount as indicated on the fee notice. No lease shall be effective to authorize grazing use thereunder until such advance payment has been made. A lease may be canceled pursuant to § 4125.1–1 (h) for failure to make timely payment.

(4) *Refunds.* No refunds of grazing fees properly paid in accordance with the regulations in this part and the terms of the grazing lease will be made because of the lessee's failure to make full grazing use as authorized by the lease. However, during periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of livestock disease during the life of the grazing lease, the Director on proper application may remit, refund, reduce in whole or in part, or postpone the payment of grazing fees for such period of depletion or general epidemic as he may determine. No part of the grazing fee paid will be refunded because of cancellation, relinquishment, or assignment, except as provided in § 4125.1–1(i) (3), (5), (8), and (9).

(n) *Period of lease.* A grazing lease or lease renewal may be issued for any period not in excess of 10 years and may be limited by the Authorized Officer to the term of a lease or control of lands that have been recognized as the basis for the grazing lease.

§ 4125.1–2 Assignment and relinquishment of grazing lease.

(a) *Assignment of grazing lease.* The lessee may assign a grazing lease only with the consent of the Authorized Officer; provided that the assignee has control of preference lands. The Authorized Officer will require the assignee to furnish proof of ownership or control of preference lands. The proposed assignment must be made on a form approved by the Director and must be filed with the Authorized Officer within 90 days from date of its execution. It must contain all the terms and conditions agreed upon between the parties and will be made effective only for the unexpired period of the assignor's lease. The assignment, properly executed and signed by the assignor, and the new application signed by the assignee will constitute the assignee's acceptance of the terms of the grazing lease. No assignment will be recognized or confer on the assignee any right to use the leased area until approved by the Authorized Officer. Advance grazing fees paid by the assignor may be credited to the assignee. All cooperative agreements and permits to construct or maintain range improvements on the leased land must be assigned at the time of the grazing lease assignment.

(b) *Relinquishment of grazing lease.* Upon written request, the Authorized Officer may accept a grazing lease relinquishment, in whole or in part, provided that all fees and charges then due have been paid.

§ 4125.1–3 Appeals.

Any applicant or lessee whose interest is adversely affected by a final decision of the Authorized Officer may appeal to the Director, and from the Director to the Secretary, in accordance with the procedure for appeals and contests set forth in Part 1840 of this chapter.

§ 4125.1–4 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the leased lands*—(1) *Qualifications of applicant for range improvement permit.* An applicant for a permit to construct or maintain range improvements, or to use and maintain range improvements constructed and owned by a prior occupant of the leased land, must be qualified under § 4121.1–1 and hold a valid lease.

(2) *Applications.* Applications for permits must be approved prior to construction. Applications for permits must be filed with the Authorized Officer on a form approved by the Director. Construction of range improvements without an approved permit may result in cancellation of the grazing lease as provided in § 4125.1–1(h).

(3) *Appeals.* The Authorized Officer will act on the application and such action shall be final unless the applicant appeals in accordance with § 4125.1–3.

(4) *Assignments.* Assignments of range improvement permits must be be filed with the Authorized Officer on a form approved by the Director and are not effective until approved by the Authorized Officer.

(5) *Permit standards.* The Authorized Officer will specify the minimum Bureau of Land Management standards and design for all range improvements. Failure to comply with the standards and design

may result in cancellation of the range improvement permit and/or the grazing lease as provided in § 4125.1–1(h).

(6) *Cooperative agreements.* A lessee may enter into a cooperative agreement with the Authorized Officer to construct and maintain range improvements upon the leased land. Failure to comply with the terms of such an agreement within a reasonable time, as allowed by the Authorized Officer, may result in the cancellation of the agreement and/or the grazing lease as provided in § 4125.1–1(h). A cooperative agreement for range improvements shall be made on a form approved by the Director.

(7) *Removal of improvements; compensation for loss of improvements.* (i) When a grazing lease expires or is terminated, the Authorized Officer may require an applicant for a subsequent lease to agree to compensate the prior lessee for the current value of his share of the cost of authorized permanent improvements placed on the leased land. The prior lessee must file a written application for compensation within 30 days after the date of termination or expiration of his lease or the date of the final decision terminating it. The amount of compensation shall be determined in accordance with § 4125.1–4(a)(8)(i). The failure of the new lessee to pay the prior lessee in accordance with such agreement shall be cause for cancellation of the new grazing lease.

(ii) The leasee will be allowed ninety (90) days from the date of expiration or termination of the grazing lease within which to remove improvements not disposed of in the manner set forth in subdivision (i) of this subparagraph; if not removed or otherwise disposed of within the said period or any extension thereof granted by the Authorized Officer, such improvements shall become the property of the United States. No improvements may be removed if the lessee is in default with respect to the grazing lease.

(8) *Leased land subject to disposition; compensation for loss of improvements.* (i) Ordinarily, before an application for disposal of leased lands under the public land laws is allowed, the applicant must agree to compensate the lessee or other party for any authorized range improvements in which the lessee or other party has a financial investment. If the parties are unable to agree to the amount, manner, and time for compensation for such improvements, such matters shall be determined by the Authorized Officer. The failure of the applicant to comply with the agreement or the conditions fixed by the Authorized Officer shall be cause for cancellation of any right or interest in the land acquired by the applicant by reason of the allowance of the application. If improvements have been constructed in whole or in part with Federal funds, are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), the application may be allowed in the discretion of the Authorized Officer without compensation to the United States for its share of the value of the improvements. In such cases, the Authorized Officer shall determine whether the grazing improvements are needed by the United States and whether the probable salvage value is sufficient to warrant removal of the salvageable materials.

(b) *Contributions for administration, protection, and improvement of public lands.* The Authorized Officer may accept contributions, made under section 9 of the Taylor Grazing Act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction.

(1) Any individual, association, corporation, State or local body or private group, may enter into an agreement with the Authorized Officer with respect to such contribution.

§ 4125.1–5 Pledge of leases as security for loans.

(a) A grazing lease may be pledged as security for a loan from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may obtain from the Authorized Officer a written statement concerning the status of the grazing lease and related information. A service charge of $10 will be made for searching the records, except that Federal and State lending agencies shall be exempt from such charge.

(b) A borrower-lessee desiring an extension of the grazing lease term may file a request therefor with the Authorized Officer, setting forth the name of the lending agency, purpose and amount of the loan, and the need for an extension of the grazing lease. If the Authorized Officer determines that an extension will not conflict with the applicable laws and is not contrary to the public interest, he may issue a new grazing lease for a period up to 10 years from the date of the loan but not to exceed the period of the loan.

(c) If the preference land of a lessee is acquired by a lending agency through foreclosure or otherwise, the agency, its grantees and lessees, or parties authorized by it to occupy the preference lands, may, if qualified, file an application for the issuance of a new grazing lease. If, in selling the property, the lending agency takes back the mortgage on the property, the agency will receive the same administrative consideration as in the case of an original loan.

(d) Where a lending agency files notice with the Authorized Officer that it has made a loan and has accepted a grazing lease as security, such agency will be advised of any adverse action taken affecting the lease. The failure of the Bureau of Land Management to give timely notice of any such adverse action shall impose no liability or obligation on the Bureau of Land Management or any of its employees.

SUBCHAPTER I—TECHNICAL SERVICES (9000)

Group 9200—Protection

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

§ 9239.3 Grazing.

§ 9239.3–1 Outside grazing districts.

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this subpart or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts.

(b) A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated shall be in default and shall be subject to the provisions of § 4122.6 of this chapter. In addition he may be subject to trespass action in accordance with the practices and procedures in §§ 9239.3–2(a), 9239.3–2(c) (1), (2), (3), (4), 9239.3–2(d), and 9239.3–2(g) of this chapter, modified so far as practicable and necessary to include Federal land outside of established grazing districts.

(c) When the alleged trespasser is not a lessee of lands under the regulations of this subpart the signing officer may take action against the trespasser in accordance with the practices and procedures in §§ 9239.3–2(a), 9239.3–2(c) (1), (2), (3), (4), 9239.3–2(d), and 9239.3–2(g) of this chapter modified so far as practicable and necessary to include lands subject to lease under the provisions of this subpart or within a stock driveway.

This Circular replaces and revokes Circulars 2246 and 2255.

GPO 855-043

Circular No. 2246

GRAZING REGULATIONS for the PUBLIC LANDS

U.S. DEPARTMENT OF THE INTERIOR
Stewart L. Udall, Secretary

BUREAU OF LAND MANAGEMENT
Boyd L. Rasmussen, Director

September 1968

PREFACE

The regulations contained herein are applicable to the use, management, and protection of 178,000,000 acres public land administered under the authority and provisions of the Taylor Grazing Act of June 28, 1934, and the O&C Act of August 28, 1937, as amended and supplemented.

Part 4110, Grazing Administration (Inside Grazing Districts) is applicable to the 159,000,000 acres of grazing land administered by the Bureau of Land Management's 58 grazing districts. It provides the necessary regulations pursuant to Section 3 of the Taylor Grazing Act for intensive management of the public lands.

Part 4120, Grazing Administration (Outside Grazing Districts and exclusive of Alaska), provides regulations (pursuant to Section 15 of the Taylor Grazing Act and Section 4 of the O&C Act) for the use and management of the 19,000,000 acres of leased lands that have not been included within grazing districts.

Subpart 9239, Trespass - Grazing, provides grazing trespass regulations, including disciplinary actions resulting from the commitment of acts prohibited and violation of the rules of fair range practice.

Subpart 1853, Hearings Procedures - Grazing, provides regulations, within grazing districts, for the handling and processing of appeals.

These regulations now represent many modifications of the original regulations. Such amendments have been found necessary to meet more effectively the objectives of the Act by improving the orderly use of the land, preventing overgrazing and range depletion, and stabilizing the livestock industry dependent upon the public land.

This publication is a consolidation of the primary regulations used in the management of the public lands administered pursuant to the Taylor Grazing Act both inside and outside the statutory grazing districts and is intended to facilitate BLM operations.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—RANGE MANAGEMENT (4000)

Group 4100—Grazing Administration

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Subpart 4110—Grazing Administration (Inside Grazing Districts); General

§ 4110.0–2 Objectives.

Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promote the highest use of the public lands within grazing districts which have been or hereafter are established, possession or control of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the Federal range will be required of all users.

§ 4110.0–3 Authority.

(a) *Saving clause.* So far as practicable and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in § 4110.0–2, the provisions of this Subpart 4110 will not be applied to the prejudice of the position of anyone who on the date of approval of this part was the holder of a grazing license or permit or who on that date had pending an application therefor.

§ 4110.0–5 Definitions.

Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management in or pursuant to the Federal Range Code for Grazing Districts (this part), unless the context otherwise requires:

(a) The "act" means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315, 315a–315r); as amended and supplemented.

(b) "The Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) The "Secretary" means the Secretary of the Interior or his authorized agent.

(d) The "Director" means the Director of the Bureau of Land Management or his authorized agent.

(e) "State Director" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(f) "Federal range" means land within established grazing districts administered by the Bureau of Land Management under the Federal Range Code for Grazing Districts (this part), including the vacant, unappropriated, and unreserved public land of the United States chiefly valuable for grazing and forage crops; State, county, and privately owned land leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land.

(g) "Property" means privately owned or controlled land or water used in range livestock operations.

(h) "Base property" means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(i) "Base property qualifications" means the maximum amount of grazing privileges on Federal range properly allowable to base properties in class 1 or class 2.

(j) "Forage land" means land the principal use of which is the production of natural or cultivated feed for livestock.

(k) (1) "Land dependent by use" means forage land other than Federal range of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the "priority period", was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years of such priority period in connection with substantially the same part of the public domain, now part of the Federal range. Such land may be (i) parallel land, i.e., land of the same character, interspersed with, and grazed at the same time as the Federal range on which grazing privileges may be granted, except in those grazing districts which by special rule have excluded parallel land as base property, (ii) land of different character than the Federal range and which properly supports the permitted livestock during all or part of the period that the Federal range is closed to grazing, or (iii) a combination of these two types of land. The priority period shall be the five-year period immediately preceding June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) No land shall be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year after the date when the Federal range used in creating the dependency by use first became a part of a grazing district, except that if the Federal range used in creating the dependency by use became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date. Only the last set of base properties used during the priority period by a livestock operation can be invested with dependency by use by such operation.

(3) The extent to which grazing licenses or permits will be granted on the basis of dependency by use of land, shall be governed by the following:

(i) It shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of any two consecutive years or any three years in which use was actually made during the priority period, whichever is more favorable to the applicant, on that part of the public land which, at the time of the issuance of the license or permit, is Federal range.

(ii) It shall not exceed the amount of forage needed for the number of livestock creating such dependency by use that were customarily and properly sustained on the base property during the priority period and continue to use such property to the same extent, except that in no instance shall the use of base property be for less than the minimum period established under § 4111.2–1. The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that necessary for the proper support of the number of livestock used in creating the dependency by use (class 1) the base property, to the extent of such excess forage capacity, may be treated as dependent by location (class 2) if so qualified.

(iii) Whenever the dependency by use of two or more base properties was created by the use of all or part of the same Federal range, during the same or at different seasons of the year, by two or more livestock operations, the relative dependency by use of each of the base properties shall be proportionate to the average annual use actually and properly made of the Federal range during the priority period by each of the livestock operations.

(l) "Land dependent by location" means forage land other than Federal range, which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(m) "Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by the grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under § 4115.2–1(k)(2), the charge for one horse grazing on the Federal range for one month shall be at twice the rate charged for one cow grazing for the same period.

(n) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(o) "Full-time water" means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(p)(1) "Prior water" is water which, during all or not less than two years of the priority period was used to service certain public domain now part of the Federal range for a livestock operation that was established, permanent, and continuing, and which normally involved the grazing of livestock on the same areas of public land for a certain portion or portions of the years of such use. For the purpose of this definition the priority period shall be the five-year period immediately preceding June 28, 1934, except that in any area placed within a grazing district or added to an existing district by boundary modification after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) Where a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, have served to invest such water with the attribute of priority, but such livestock operation subsequently ceased using such water or waters and used other water or waters in such manner as to invest them, too, with priority, only the latter water or waters shall be considered as prior, unless the former are also prior because of use by another livestock operation.

(3) No water shall be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district except that when such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

(4) The extent to which grazing privileges will be granted on the basis of the priority of water shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of the years in which use was actually made during the priority period, on substantially that part of the public lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(q) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

(r) "Adjudication of grazing privileges" is the determination of the qualifications for grazing privileges of the base properties, land (§ 4110.0–5 (k)(1)) or water (§ 4110.0–5 (p)(1)) offered in support of applications for grazing licenses or permits in a range unit or area, and the subsequent equitable apportionment among the applicants of the forage production within the proper grazing season and capacity of the particular unit or area of Federal range, and acceptance by the applicants of the grazing privileges based upon the apportionment or its substantiation in a decision by an examiner, the Director, or the Secretary upon appeal. (Applicable provisions are Subpart 4111 and § 4115.2–3.)

Subpart 4111—Awards of Grazing Privileges

§ 4111.1 Qualifications of applicants.

§ 4111.1–1 Qualifications.

An applicant for a grazing license or permit is qualified if:

(a) He is engaged in the livestock business and is a citizen of the United States or has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen or a valid petition for naturalization, or:

(b) It is a group, or association authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, all the members of which are qualified under paragraph (a) of this section; provided that the agreement or articles of association under which the association has been formed are approved by the State Director, or:

(c) It is a corporation, the controlling interest in which is vested in persons qualified under paragraph (a) of this section and which is authorized to do business under the laws of the State in which grazing privileges sought are to be exercised; provided that the articles of incorporation have been approved by the State Director.

§ 4111.1–2 Effect of transfer arising through operation of law.

The acquisition of rights in base property by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, based on such property, for a period of two years after such acquisition. Upon the failure of such person to qualify within the two year period the license or permit will be subject to cancellation in accordance with § 4115.2–1(d).

§ 4111.2 Base property qualifications and classification.

§ 4111.2–1 Minimum requirements; classification of base properties.

(a) The District Manager, after recommendation by the advisory board, shall establish minimum base property requirements as a condition of qualification for the issuance of a license or permit in each district or unit thereof, taking into consideration the availability of base properties for proper use with and their relative dependence upon Federal range, land and water conditions, and other factors affecting livestock operations in the area according to customary use and best practices for good range management.

(b) The District Manager after recommendation by the advisory board will classify base properties as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

§ 4111.3 Adjudication and apportionment of grazing privileges.

§ 4111.3–1 Mandatory requirements; rating and classification of Federal Range.

(a) *Grazing capacity; seasons and maximum annual period of use.* The District Manager, after recommendation by the advisory board, will rate the grazing capacity of each unit or area in a grazing district and will classify each for the proper seasons of use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range therein during any one year.

(b) *Wildlife; allowance for maintenance.* In each grazing district a sufficient grazing capacity of Federal range suitable for wildlife will be reserved by the District Manager after consulting with wildlife interests and the advisory board, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *Preference applicants.* Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in a livestock business, bona fide occupants or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner specified in paragraph (d) of this section. Provision will be made for other applicants so far as Federal range remains available.

(d) *Order of preference.* Licenses or permits will be issued in the following order:

(1) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(2) *Regular licenses and permits; number of livestock.* Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

§ 4111.3–2 Procedures.

(a) *Unit-wide or area-wide adjudication.* (1) The District Manager, after recommendation by the advisory board, may make a simultaneous classification under § 4111.2–1 of all offered base properties within a single administrative unit or grazing area and may allocate in a single action the available Federal range within the unit or area upon which such base properties are dependent.

(2) The District Manager shall give written notice by certified mail of such classification and allocation to the persons offering such base properties, naming a place and date not less than 30 days thereafter to file protest to the advisory board, in accordance with § 4115.2–1(b). Thereafter, and provided there is then pending a valid application for grazing privileges, the District Manager will render his final decision thereon and will allow the right of appeal to the examiner in accordance with § 4115.2–3.

(b) *Permits; annual licenses.* Grazing permits may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing; a recommendation thereon made by the advisory board, and approval thereof given by the District Manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the grazing regulations for grazing districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. The practice of issuing an annual license will be continued until such time as a permit is issued. Upon the issuance of a permit any outstanding license or part thereof which has been granted on the same qualifications on which the permit is based will terminate. Upon expiration of a term permit an annual license may be issued, pending issuance of a new term permit.

(c) *Allotments.* Allotments of Federal range will be made to licensees or permittees when conditions warrant. Division of the range by agreement or former practice will be followed where practicable, provided such division is in substantial conformity with the qualifications for grazing privileges of the respective applicants and the agreement is reduced to writing and approved by the District Manager.

(d) *Administration of lands additionally available; preference right for lands restored from withdrawal.* (1) Any land within the exterior boundaries of a grazing district made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315M–1—315M–4), by the revocation of a withdrawal, or by the cancellation or relinquishment of a homestead entry or claim, or otherwise, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management.

(2) Where public lands are restored from withdrawal and the District Manager determines that the lands are available for grazing use, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to their restoration, shall have a superior preference to the further grazing use of such lands. The preference right must be asserted and an application for license or permit, on a form approved by the Director obtainable from the District Manager must be filed with that officer not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The District Manager may issue to such applicant an annual license or a term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act. 43 U.S.C., 1952 ed., sec. 315(h).)

§ 4111.4 Adjustments of grazing privileges.

§ 4111.4–2 Increases.

Increases in grazing capacity, when conditions warrant, and after recommendation of the advisory board and approval of the District Manager, will be apportioned in a manner that will assist in the stabilization of livestock operations controlling qualified base property, with emphasis being given to the restoration of reductions that have been imposed to reach the grazing capacity of a particular allotment or range area, and to allocation of increased grazing capacity to operators or interests whose efforts were responsible for such increases.

§ 4111.4–3 Reductions.

(a) Downward adjustments will be imposed in the following order:

(1) Nonrenewable licenses.

(2) Regular licenses or permits to the extent, if any, to which they have been issued in excess of the base property qualifications or have otherwise been improperly issued.

(3) Regular licenses or permits properly issued, on an equal percentage basis.

(b) Base property qualifications will be adjusted, after licenses or permits have been issued, to the extent that such base property qualifications exceed the long-term forage production potential of any area of Federal range. Adjustments required below the forage production potential of any area of Federal range, after licenses or permits have been issued, to balance authorized use with the proper stocking rate of the Federal range, will be apportioned equitably or as agreed to among the qualified licensees or permittees and the District Manager after recommendation by the district advisory board. Such adjustments may be made either by authorizing less livestock or less time or by both methods as determined by the District Manager.

(c) When the District Manager determines that the forage production potential, with improvements, of the Federal range area is significantly greater than the present allowable stocking rate, he will issue combination active use and suspended nonuse licenses or permits for not to exceed the forage production potential, except that at his option, and after obtaining advice from the district advisory board, he may apply paragraph 2(d) of this section in making the adjustment. The difference between the forage production potential and the present allowable stocking rate of the Federal range area will be held in a suspense status, provided that the aggregate of authorized active use and "suspended nonuse" shall not exceed the base property qualifications of any licensee or permittee.

(d) When the District Manager, after recommendation by the district advisory board, determines that the imposition of the full amount of downward adjustment in authorized active use necessary to reach the proper stocking rate of a Federal range area would impose a serious hardship on the range users, he is not required to impose the full amount of the adjustment forthwith, but will schedule a percentage of the required adjustment during each of the three years immediately following the District Manager's determination as the circumstances in each case may warrant, except that when the total adjustment is less than 15 percent of the total authorized active use, it will be imposed forthwith in the full amount.

(e) The District Manager will notify each affected licensee or permittee by certified mail of his decision to make an adjustment in authorized active use to reach the proper stocking rate of any Federal range area and of the manner in which the adjustment is to be made. The District Manager's decision will allow 30 days from receipt thereof in which the licensee or permittee may file an appeal in accordance with § 4115.2–3 and § 1853.1 of this chapter. If no appeal is filed within the 30-day period, the adjustment will be in accordance with the District Manager's decision and no further appeal will be allowed even though the adjustment may be scheduled under paragraph 2(d) of this section. If any timely appeal is filed, after receipt of the District Manager's decision notice, the adjustment for the entire area of Federal range under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the ultimate decision will be applied to its full extent for the next grazing season immediately following the effective date of that decision. If, however, the final decision on the appeal is rendered within the 3-year adjustment period established by the District Manager's decision notice, the required adjustment may be apportioned over the remaining portion of that period. In the event that the orderly administration of the Federal range or other public interest so requires, any decision may be placed in full force and effect in accordance with the provisions of §1853.8(b) of this chapter.

(f) Federal range lands to be used under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of a pending or proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with Subpart 2411 of this chapter, and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Parts 1840 and 1850 of this chapter.

Subpart 4112—Management Practices

§ 4112.2 Designation of ranges for particular kinds of livestock.

The District Manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the Federal range.

§ 4112.3 General rules of the range.

§ 4112.3-1 Acts prohibited.

The following acts are prohibited on the Federal range:

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(b) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(c) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(d) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(e) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the District Manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(f) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(g) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

§ 4112.3-2 Rules of fair range practice.

All licensees and permittees shall comply with the following rules of fair range practice:

(a) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating to the branding of livestock and sanitary requirements shall be followed.

(b) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the District Manager.

(c) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the District Manager. Upon request by the majority of the users of any community allotment of Federal range, the District Manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

(d) When so requested by the State Director or District Manager, the licensee or permittee shall join with the Bureau of Land Management in preparing a fire plan which shall set forth in detail the program for prevention, control, and extinguishment of fires, including the responsibility of the licensee or permittee for action on his range allotment and on adjacent Federal range.

Subpart 4113—Supervision and Inspection

§ 4113.1 Procedure for enforcement of rules and regulations.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule. (Refer to § 9239.3-2 of this chapter for detailed enforcement procedures.)

Subpart 4114—Advisory Boards and Local Associations

§ 4114.1 Grazing district advisory boards.

§ 4114.1–1 Authorization for establishment; number of members; qualifications.

The State Director shall fix the number of members to be recommended by election for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be recommended by election, but shall be selected directly by the State Director. The State Director may fix the number of district advisers to be recommended by election as representatives of each class of stockman, according to the kind of livestock owned, or may fix the number to be recommended by election from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to recommend one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

§ 4114.1–2 Election, time and place; the general procedures.

All district advisers, except wildlife representatives, shall be recommended by election in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management, and published in the FEDERAL REGISTER. An election to recommend district advisers for appointments for each grazing district will be held within 90 days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons recommended by election for appointment at the first election after establishment of a grazing district, or at the first election during the 1964 calendar year, may be recommended for appointment and annual reappointment for a maximum period of three consecutive years; or the District Manager may divide the group, by lot, as evenly as possible into three groups to be considered as being recommended for appointment or reappointment for one year, two consecutive years, or three consecutive years respectively. Thereafter, elections will be held annually, for each group whose term of recommendation for appointment has expired, in accordance with the options set forth in the General Procedures for Grazing District Advisory Board Elections.

§ 4114.1–3 Appointment; term of office; removal; vacancies.

A person recommended by election for appointment as district adviser shall assume office only after he has been appointed by the State Director and has taken the oath of office. The State Director may, in his discretion, appoint those in group 1 for a period not to exceed 365 days; those in group 2 for an initial period of 365 days and thereafter a subsequent like period; and those in group three for an initial period of 365 days and thereafter two successive like periods. The State Director may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of the district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the District Manager, shall be transmitted to the State Director for consideration. A person selected to fill a vacancy shall be appointed for the remainder of the unexpired 365-day period, after which a person shall be recommended by election for the balance of the period of recommendation at the next regular election. The wildlife representative will be appointed by the State Director for a term of office that does not exceed 365 days.

§ 4114.1–4 Meetings; organization.

District advisory boards shall meet at any time and place within or near the district designated by the State Director or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licenses or permits or any other business.

§ 4114.1–5 Functions and duties of district advisers; limitations.

District advisers shall advise or make recommendations on the following matters:

(a) The qualifications, classification, and requirements of base property.

(b) The transfer and relinquishment of base property qualifications.

(c) The grazing capacity of the Federal range in the district.

(d) Application for all types of grazing licenses or permits, including nonuse, or extension of use: *Provided*, That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(e) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(f) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of this part.

(g) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(h) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(i) Proper rules of fair range practice.

(j) Allotments of range by classes of livestock or for community or individual use.

(k) Seasonal use of the Federal range or any part thereof.

(l) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(m) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(n) Any recommendations made by local associations of stockmen in the district.

(o) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(p) Special rules for the district, within meaning of § 4115.2–4.

(q) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

§ 4114.2 State advisory boards.

§ 4114.2–1 Membership and meetings.

The livestock members of each grazing district advisory board shall select from their number at the first meeting of the board after each election, two members and two alternates to serve on a State advisory board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State will select one of their number and one alternate to serve as a wildlife member on the State advisory board. In addition, the State advisory board will have one or more additional members, but not exceeding seven, who will represent other interests such as forestry, minerals, soil conservation, outdoor recreation, urban and suburban development, county government, and State government. Such additional members and their alternates will be selected by the State Director from nominations made by State or local government officers or organizations reflecting nonlivestock interests in the management or disposition of public lands. The time and place for meetings of the State advisory board shall be set by the State Director. The board shall select from its members one member to be chairman of the board. The co-chairman of the board shall be the State Director.

§ 4114.2–2 Functions and duties.

The State advisory boards shall consider and make recommendations on grazing, wildlife, forestry, outdoor recreation, minerals, soil conservation, urban and suburban development, and other resource administration policies or problems affecting the State as a whole. The operations of the State boards, including their meetings shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.3 National Advisory Board Council.

§ 4114.3–1 Membership and meetings.

The livestock members of each State advisory board shall select from their number, at its first meeting of each new term, one member and one alternate representing cattle and horses, and one member and one alternate representing sheep and goats, to serve on the National Advisory Board Council. The elected wildlife member or his alternate on each State advisory board will serve on the National Advisory Board Council representing wildlife interests. The State Director from each of the ten Western

States with organized grazing districts shall submit a list of nominees, selected from the nonlivestock and nonwildlife membership on the State board. From this list, and other sources as he may determine, the Secretary of the Interior or his authorized representative shall appoint members, not exceeding ten in number, to the National Advisory Board Council to represent nonlivestock and nonwildlife interests. In addition to the above membership, one member from each of the States of Alaska and Washington will be appointed by the Secretary of the Interior or his authorized representative from a list submitted by the respective State Directors pursuant to nominations made by State or local government officers or organizations reflecting interests in grazing or other uses of public lands. The Council shall select from its members one member to be chairman of the Council. The co-chairman of the Council shall be an official of the Department of the Interior appointed by the Secretary of the Interior who shall set the time and place for such meetings of the National Advisory Board Council.

§ 4114.3–2 Functions and duties.

The National Advisory Board Council shall consider and make recommendations on policies and problems of a national scope related to all natural resource use and management. The operations of the National Council, including their meetings, shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.4 Local associations of stockmen.

§ 4114.4–1 Organization.

Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

§ 4114.4–2 Articles of incorporation; constitutions; by-laws.

Such associations shall be organized as corporations "not-for-profit", if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Director for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance which they are in conflict with the provisions of this part or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

§ 4114.4–3 Powers.

Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(a) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(b) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district under permit issued by the Bureau.

(c) To act in an advisory capacity in the administration of the Federal range lying within the district.

(d) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes, contemplated by the act.

(e) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

§ 4114.4–4 Cooperative agreements for use of lands; obligation of licensees and permittees to share cost.

Whenever the grazing capacity of Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the District Manager after consideration of the recommendation of the association. The District Manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

Subpart 4115—Records and Administrative Procedures

§ 4115.2 Procedures.

§ 4115.2–1 License and permit procedures; requirements and conditions.

(a) *Filing and consideration of applications; interdistrict agreements; recommendations; service of notice.* (1) Each year a date will be set by the District Manager prior to which all applications for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) All applications for grazing licenses or permits will first be presented to the district advisory board for advice and recommendation: *Provided,* That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(3) Where a grazing area or unit is located in one district, but is administered by the District Manager of an adjacent district pursuant to a formal interdistrict agreement, applications for grazing licenses or permits on such area or unit shall be filed with the District Manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the District Manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the District Manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable and the District Manager approves, he will notify the applicant by ordinary mail, which notice may be the fee billing. If the advisory board recommendation is favorable but the District Manager disagrees, notice will be served on the applicant in person or by certified mail sent to his address of record, setting forth the recommendation of the advisory board and the Manager's disapproval, together with the reason or reasons for a prospective adverse decision, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a date, not less than ten days thereafter, on or before which oral or written protest may be presented to the District Manager. If the recommendation of the board is to any extent adverse, notice will be served on the applicant in person or by certified mail sent to his address of record, setting out the reason or reasons given by the advisory board for the adverse recommendation, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a place and date, not less than ten days thereafter, when protest against the recommendation will be heard. The District Manager may also serve notice on any other applicant or applicants who may be directly affected by the adoption of the advisory board recommendation or the prospective decision of the Manager which will allow an appropriate protest. In any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may recommend that a protest meeting not be held, whereupon the District Manager may accept the recommendation of the board as its final consideration.

(b) *Protests; reconsideration by advisory boards; service of notice.* At the time and place fixed for the protest meeting, any licensee, permittee, or applicant may appear, in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the District Manager. If such recommendation is favorable to the protestant, and the District Manager approves, he will notify the protestant thereof by ordinary mail, which notice may be the fee billing. If the recommendation is to any extent adverse, and the District Manager approves, a notice giving the reason or reasons therefor will be served on the protestant in person or by certified mail, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts that serve as controlling factors. Such notice will constitute the District Manager's final decision for purposes of appeal.

(c) *Allowance or rejection of application; modification; service of notice.* The District Manager, in the light of all facts and circumstances and after reference to the advisory board, may issue or refuse to issue a grazing license or permit. When the District Manager takes an adverse action on any application, a notice including a recital of the specific reasons for the action taken will be served on the applicant in person or by certified mail. The notice will advise the applicant of his privilege to appeal to an examiner.

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of §§ 4111.1, 4115.2–1(e), 4115.2–1(k)(4), 4114.4–4 or 4115.2–5(a)(6). Except as otherwise specifically provided, in any such case or in any case in which it shall appear that a license or permit confers grazing privileges in excess of those properly allowable under this part, the District Manager will notify the licensee or permittee that the license or permit is thereby held for cancellation or reduction either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such action should not be made final. Such notice will set forth fully the reasons for the proposed action, specifically referring to the pertinent provisions of this part, and will be served on the licensee or permittee by certified mail or in person. In case of failure of the licensee or permittee to show cause within the time allowed, the license or permit will be canceled or reduced to the extent indicated in the notice. The District Manager will consider any cause shown and, if satisfied of its sufficiency, will close the case; if not satisfied as to its sufficiency, or if no cause is shown, he will notify the licensee or permittee in person or by certified mail that the cancellation or reduction will become final unless an appeal to the examiner is filed in accordance with § 4115.2–3.

(e) *Terms and conditions.* The issuance and continued effectiveness of all regular licenses and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation.

(2) No license or permit will provide for the grazing livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the grazing capacity of the Federal range to be used, as determined by the District Manager, except as may be allowed under § 4111.4–2 (c) and (d).

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(6) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately to the reduction in available grazing capacity caused by the loss of such Federal range.

(7) If a licensee or permittee for two consecutive years ceases to make substantial use of his base property in connection with his year-round livestock operation, the authorized use under such license or permit and the qualifications of the base property may be subject to reduction in proportion to the diminished use of the base property.

(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the District Manager; except that, if the licensee or permittee notifies the District Manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the District Manager shall determine; or

(ii) All or part of such other lands or grazing privileges as are necessary to his year-round operation, the license or permit will be subject to reduction in proportion to the loss of such necessary lands or grazing privileges unless the licensee or permittee notifies the District Manager within 30 days after such loss and thereafter within the time allowed by the District Manager after recommendation by the advisory board acquires ownership or control of other lands or grazing privileges sufficient to assure a year-round operation.

(9) Base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To include in an application for a license or permit or renewal thereof, the entire base property qualifications for active, nonuse, or combination of active and nonuse, except where the base property qualifications are included in an outstanding current term permit, or where the allowable use has been reduced under §§ 4111.4–3 (a)(3) and (c), and 9239.3–2(e) of this chapter.

(ii) To accept a license or permit issued pursuant to such application.

(10) The failure for any two consecutive years to make substantial use as determined by the District Manager, after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit, may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Nonuse, in whole or in part, of grazing privileges under a license or permit may be authorized by the District Manager, upon application by the licensee or permittee, after reference to the advisory board, for the following reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit in whole or in part may result in a

proportionate loss of the base property qualifications supporting such license or permit.

(13) (i) No readjudication of any license or permit, including free use license, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

(ii) The Bureau of Land Management may make adjustments in licenses and permits at any time when necessary to comply with the Federal Range Code for Grazing Districts.

(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the District Manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s), as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the District Manager.

(iii) May take necessary action to enforce the requirements under subdivisions (i) and (ii) of this subparagraph, in accordance with the provisions of paragraph (d) of this section.

(f) *Interest of Member of Congress prohibited.* No Member of or Delegate to Congress shall be admitted to any share or part of any license or permit issued under the act, or to derive any benefit to arise therefrom. (41 U.S.C. sec. 22; 18 U.S.C. secs. 431–433.)

(g) *Change in grazing seasons.* Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license or permit may, upon written approval of the District Manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(1) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(2) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(3) Such use will not be detrimental to the Federal range, and

(4) Such use will not adversely affect other licensees or permittees.

(h) *Exchange-of-use agreements.* Exchange-of-use agreements may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land, without payment of grazing fees, provided that during the term of the agreement the Bureau shall have the management and control of such non-Federal land for grazing purposes.

(i) *Nonrenewable licenses.* Nonrenewable licenses may be issued to nonpreference applicants only for the period specified by the District Manager and for the number of livestock for which range is temporarily available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

(j) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U.S.C. App. 511(1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the District Manager an application, in duplicate, setting forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the District Manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner terminated upon further application to the District Manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for not to exceed the period of such suspension, but upon the termination of the suspension, either by reason of the

expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, or otherwise, such temporary license shall terminate as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the District Manager on an application for suspension of a license or permit under this paragraph may be appealed by the licensee or permittee to the Director, and from the Director to the Secretary of the Interior, in accordance with the rules of practice, Part 1850 of this chapter.

(k) *Fees for grazing licenses and permits*—(1) *Free-use licenses.* No fee will be charged for the issuance of a free-use license.

(2) *Licenses and permits; rates.* (i) Each regular licensee or permittee, and holder of a nonrenewable license will be charged fees, consisting of a grazing fee for use of the range and a range improvement fee, for the animal unit months authorized by the license or permit, at a rate per animal unit month. All billing shall be issued in accordance with the rates prescribed in subdivision (ii) of this subparagraph. All livestock 6 months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No fees will be charged for livestock under 6 months of age. Range improvement fees may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any State or Federal agency, or any person, association, or corporation. A minimum annual charge of $10 will be made on all regular licenses or permits, and nonrenewable licenses.

(ii) (*a*) The fee or fees for any fee year, beginning on March 1, will be established by the Secretary at a rate which is equivalent to a specified percentage, to be fixed by the Secretary, of the average of the prices per pound of beef and lamb, rounded to the nearest whole cent, which was paid to growers during the preceding calendar year in the markets of the 11 Western States, as determined by the Secretary based upon market prices as reported by the Department of Agriculture.

(*b*) The fee for any fee year may be changed by the Secretary from that of the preceding year by fixing a new specified percentage of the average of the prices per pound of beef and lamb. The fee for any fee year shall, in any event, be adjusted by the Secretary, in addition to any percentage adjustment that may be made, to conform to changes in market price conditions whenever in the preceding calendar year there is a change in the average of such prices, rounded off to the nearest whole cent, of 2 cents or more above or below the corresponding average for the preceding year.

(*c*) The fee or fees established by the Secretary for any fee year, including announcement of the portion thereof to be credited to the range improvement fund, will be published as a notice in the FEDERAL REGISTER. All regular billings shall be issued in accordance with the rate or rates prescribed in the notice.

(3) *Crossing permits.* Upon application filed with the District Manager by any person showing the necessity for crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

(4) *Payment of fees; modification in fees due.* No license or permit shall be issued or renewed until payment of all fees due the United States under these regulations has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice and are payable in full in advance before grazing use is authorized. Grazing privileges may be canceled or reduced pursuant to paragraph (d) of this section for failure to pay the fee in accordance with the fee notice. Any licensee or permittee who desires to make a change in authorized grazing use must file, in advance, a written request for such changes with the District Manager. If the District Manager approves the request he will issue an adjusted fee notice.

(5) *Refunds.* No refund of fees properly paid will be made because of an unauthorized failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(i) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Director may in his discretion credit, remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period so long as the emergency exists.

(ii) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be filed with the District Manager under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U.S.C. 95, et seq.), or such excess fees may be credited on subsequent fee notices.

§ 4115.2–2 Transfers and relinquishments.

(a) *Transfer of base property; effect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if qualified under § 4111.1–1, to so much of the grazing privileges as are based thereon. Except as otherwise herein provided, the existing license or permit and the grazing privileges thereunder shall automatically and without further notice be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property; except that further grazing under the license or permit may be temporarily extended pursuant to request and notification filed in accordance with § 4115.2–1(e) (8) (i); except, also, where the transfer arises as a result of testamentary disposition the existing license or permit may continue in effect until the end of the current grazing season. Thereafter applications for renewal of a license or permit shall be filed by the heirs, devisees, executor, administrator, or personal representative, as the case may be.

(2) A transferee shall, within 90 days from the date of transfer, file with the District Manager documentary evidence of the transfer and an application on a form approved by the Director for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred. Where, however, a transfer, or a different vesting in any manner, of a leasehold interest in land or water may result in interference with the stability of livestock operations or with proper range management, upon a finding to that effect by the District Manager, after reference to the advisory board, such land or water will lose its base property qualifications and grazing privileges based thereon will be denied.

(b) *Transfer of base property qualifications; limitations; consent of owner or encumbrancer; effect.* (1) A licensee or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 4111.1–1. An application for approval of a transfer shall be filed with the District Manager on a form approved by the Director for land base or water base.

(2) Transfer of base property qualifications may be made under the following conditions:

(i) When an applicant owns or controls base land or lands having a forage production in excess of that required to support the licensed or permitted livestock, the qualifications may be concentrated on that part of the property having the forage production required by and which will continue to be used for the support of such livestock.

(ii) When such qualifications are to be transferred from land owned or controlled by the applicant, to land owned or controlled by others, the transfer will be recognized only to the extent such qualifications do not exceed the forage production of the new base property.

(iii) When an applicant owns or controls base water, the qualifications may be transferred to another adequate water source which will service the same range area.

(3) No transfer will be allowed under this paragraph if it interferes with the stability of livestock operations or proper range management, or adversely affects the local economy. No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made, except that in an application for transfer of class 1 qualifications where the applicant for such transfer is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such consent will not be required. Upon approval of the application by the District Manager after reference to the advisory board, the transfer shall be effective as of the date of filing of the application, and the base property from which the transfer is made will thereupon lose its qualifications to the extent indicated in the transfer.

(c) *Relinquishment of base property qualifications; limitation; effect.* Upon request, the district manager may accept a written relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified: *Provided*, That no such relinquishment will be accepted without the written consent of the owner or owners, if other than the applicant, and any encumbrancer of the base property, except that if the applicant is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

§ 4115.2–3 Appeals and hearings.

Any applicant whose interest is adversely affected by a final decision of the District Manager may appeal to an Examiner in accordance with § 1853.1 of this chapter. The conduct of hearings are provided for in §§ 1853.2 through 1853.6 of this chapter. Appeals to the Director will be pursuant to § 1853.7 of this chapter supplemented by Part 1840 of this chapter. An appeal from a decision of the Director may be made to the Secretary of the Interior in accordance with Part 1840 of this chapter (see § 1853.7(c) of this chapter).

§ 4115.2–4 Special rules for grazing districts.

Whenever it appears to a State Director after considering the recommendation of the district advisory board that local conditions in any district make necessary the adoption of a special rule on any of the matters in this part in order better to achieve an administration consistent with the purposes of the act, he may, recommend such a rule, supported by a factual showing of its necessity, for the approval of the Director. Such rule, if approved, shall be published in the FEDERAL REGISTER.

§ 4115.2–5 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the Federal range.* (1) *Qualification of applicants for permits.* An applicant for a permit to construct or maintain improvements under section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must be qualified under § 4111.1–1.

(2) *Applications.* Applications for such permits shall be filed in triplicate with the District Manager on a form approved by the Director.

(3) *Appeals.* The District Manager will act on the application after reference to the advisory board and such action shall be final unless the applicant or any interested party appeals in accordance with § 4115.2–3.

(4) *Assignments.* Assignments of section 4 permits shall be filed with the District Manager in triplicate on the authorized form and shall not be effective until approved by the District Manager.

(5) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* Where an application shows that the applicant and the prior occupant have not agreed on the value of such improvements owned by the latter, the District Manager will promptly, at the applicant's expense, cause the prior occupant to be served either personally or by certified mail with a notice of the filing of the application, and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or if the prior occupant applies within thirty days from the date of service for an appearance before the District Manager, then in the light of such evidence as the applicant and the prior occupant may present in such appearance, the District Manager will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken in accordance with § 4115.2–3. Upon the failure of the prior occupant to show cause or to apply within thirty days for an appearance, the reasonable value of the improvements will be determined by the District Manager but shall be not less than the amount alleged by the applicant in his application, and the decision of the District Manager in such case shall be final. In any case when a decision has become final, payment by the applicant of the amount determined and a showing that the improvements are free of all encumbrances may be required prior to favorable action on the application for use of such improvements, and on any application for grazing privileges involving the use of such improvements.

(6) *Cooperative agreements.* A licensee or permittee may enter into a cooperative agreement with the District Manager for the construction and maintenance of range improvements on the Federal range. Failure of the licensee or permittee to comply with the terms of such an agreement within a reasonable time as allowed by the District Manager may result in cancellation of the license or permit as provided in § 4115.2–1(d).

(7) *Applications for lands containing range improvements; compensation; reservation.* Public lands embraced in a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, or other public land laws, as specified in § 4111.4.

(i) When the disposal application covers land upon which range improvements have been placed pursuant to a permit authorized under section 4 of the act, the owner thereof may be required to remove the improvements; or if the improvements are of a permanent nature, the land applicant may be required to agree in writing to compensate the licensee, permittee, or other owner of such improvements located on the lands applied for an amount to be mutually agreed upon, or, if the parties are unable to agree, then in the amount and within the time for payment as determined by the District Manager in accordance with the applicable procedure under subparagraph (5) of this paragraph.

(ii) (*a*) When the disposal application covers public land upon which range improvements have been placed by the United States, or pursuant to a cooperative agreement heretofore or hereafter entered into between the Bureau and the licensee, permittee, and/or other cooperators, the disposal application will be referred by the land office manager to the District Manager for determination as to whether it may be allowed, not withstanding such improvements, and, if so, whether with or without a reservation. If the application is to be allowed without a reservation of the improvements, the applicant may be required to agree in writing to compensate for the loss of such improvements in the amounts to be mutually agreed upon and payable separately to the Bureau and to the cooperators. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. In the event of disagreement, the District Manager shall determine the total amount of compensation due, as provided in subparagraph (5) of this paragraph, and the time for payment. Such amount shall then be payable separately to the Bureau and to the cooperators entitled thereto, in proportion to the amount or value of their respective contributions in money, material, or labor, to the total cost of the improvement, as made by them under the original cooperative agreement as specified by the District Manager.

(*b*) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the District Manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Director and to the Secretary, in accordance with the rules of practice (Part 1840 of this chapter).

(iii) Under the act of July 9, 1942, as amended (43 U.S.C. sec. 315q), the holder of a grazing license or permit shall be compensated for the losses sustained by reason of cancellation of or prevention of use of authorized grazing privileges resulting from the use of lands embraced in such license or permit for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the Federal department or agency making such use. Such payment shall be deemed payment in full for such losses.

(b) *Contributions for administration, protection, and improvement of public lands.* The District Manager may accept contributions under section 9 of the act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction in the States.

(1) Any individual, association, corporation, grazing district advisory board, State or local body or private group, may enter into an agreement with the District Manager with respect to such contribution. Where the contribution is to include money, the contributor should execute the appropriate form as requested by the District Manager.

(2) Contributions may be conditioned upon their use for specific projects or in specific localities.

(3) The District Manager may authorize refund of any amounts deposited in excess of the contributor's proper share of the expense incident to the purpose for which the contribution was made.

§ 4115.2–6 Pledge of licenses and permits as security loans.

(a) A license or permit may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the licensee's or permittee's livestock operations. Before making a loan, a lending agency may obtain from the District Manager a written statement concerning the status of the grazing license or permit and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) A borrower-permittee desiring an extension of the term of his permit may file a request therefor, in writing, with the District Manager, setting forth the name of the lending agency, purpose and amount of loan, and the need for the extension of the permit term. When it appears that such extension will be in accordance with applicable law and regulation and not contrary to the public interest, the District Manager, in his discretion, may extend the permit for a period not to exceed 10 years from the date of the loan, subject to the rules and regulations then in force and to such additional terms and conditions as the District Manager may provide. The provisions of this paragraph shall not be applicable to grazing licenses which are issued annually on a temporary basis prior to the issuance of term permits.

(c) If the base property to which the grazing privileges on the Federal range covered by the pledged license or permit are attached as a grazing unit is acquired by the lending agency through foreclosure or otherwise, such agency, or purchasers, lessees, or occupants of the property authorized by such agency, if qualified, may apply to be recognized as the successor licensee, or permittee. If in selling the property the lending agency takes back a mortgage on the base property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files with the District Manager notice that it has made a loan and has accepted a grazing license or permit as security therefor in conformity with the provisions of this section, the District Manager as a matter of cooperation will keep such agency advised of any adverse action affecting the license or permit, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the District Manager or the Bureau or any of its employees.

Group 9200—Protection

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

§ 9239.3 Grazing.

§ 9239.3–2 Inside grazing districts.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule.

(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the District manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the District manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of this part or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the District manager he will close the case; if satisfactory showing is not made within the time allowed, the violations alleged in the notice will be deemed to have been wilful and the District manager will notify the State Director thereof for further action under paragraph (e) of this section.

(b) *Violations clearly wilful; special circumstances.* Whenever it appears to the district manager that a violation is clearly wilful, grossly negligent, or repeated, or when the public health, safety, or interest requires, or when disciplinary action is advisable, the district manager will refer the matter directly to the State Director for further action under paragraph (c) or (e) of this section, whichever is appropriate.

(c) *Unlawful grazing on the Federal range; determination of damages; removal of livestock; impoundment.* (1) Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice on his lien with the District manager will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(2) Where the owner of the trespassing livestock, or his representative, is known, the district manager shall make a determination of the damage to the Federal range and other property of the United States and shall make a demand for payment upon the alleged violator, setting forth the foregoing values including the value of the forage consumed. Where the trespass grazing is not deemed to be clearly wilful the forage value shall be computed at the rate of $2 per animal unit month, or at the commercial rate if such rate is the higher; if the district manager deems the trespass grazing to be clearly wilful, grossly negligent, or repeated he shall compute the forage value at $4 per animal unit month, or at twice the commercial rate if such amount is the higher.

(3) In any case where neither the owner of the trespassing livestock, or his representative, is known, or where conservation of the Federal range and of the forage thereon requires it, the district manager, when so authorized by written order of the State Director, may take steps to remove the trespassing livestock by such methods and by such means not inconsistent with legislation which prohibits the use of airborne or motor-driven vehicles in the gathering of horses or burros, as may be necessary, and to dispose of them by sale or otherwise within not less than five (5) days after public notice of his intention to make such disposition, subject to the right of any owner or registered lienholder of such trespassing livestock to redeem the livestock within such nondisposal period upon payment of:

(i) The damage to the Federal range and other property of the United States.

(ii) The cost of such impoundment and removal.

(iii) The value of any forage consumed as determined in accordance with subparagraph (2) of this paragraph.

(4) If the amounts found to be due the United States in accordance with subparagraph (3), subdivisions (i), (ii), and (iii) of this paragraph are contested

by the owner of the livestock, his representative, or lienholder, the trespassing livestock may be redeemed by the posting of a cash or corporate surety bond in lieu of immediate payment. Such bond will be adequate to insure full satisfaction of the claims made. A hearing will then be scheduled before an examiner of the Bureau of Land Management. The hearing will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence will be confined to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass. The examiner will render a written decision assessing the amounts due.

(5) Where conservation of the Federal range and the forage thereon requires it, the State Director may temporarily close a grazing district or any portion thereof, to grazing by any class of livestock to be specified in such order. Notice of the order shall be published in a local newspaper and shall be posted at the County Courthouse of the County in which the closed area lies. The order shall require all owners of livestock affected thereby, to remove such livestock from the area within not less than five days from date of publication of the notice. Thereafter the District manager shall proceed to impound, remove, and dispose of, in the most humane manner in accordance with the provisions of this paragraph any such livestock trespassing or grazing in violation of the closing order.

(d) *Amicable settlement of civil cases involving unauthorized use of the Federal range or damage to Federal property.* Offers of settlement for the value of the forage consumed in trespass as determined in accordance with paragraph (c) (2) of this section and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provisions of the act or of the Federal Range Code for Grazing Districts in the amount of $2,000 or less may be accepted by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for the consumed forage and damage involved until finally accepted by the district manager or the State Director. Satisfaction of civil liability tdoes not relieve the alleged violator of any criminal liability under Federal law. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Director that disciplinary action is advisable because of a wilful, grossly negligent, or repeated violation, he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit and the section or sections of the Federal Range Code for Grazing Districts, or of the Act alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the value of the forage consumed, as determined in accordance with paragraph (c)(2) of this section. The notice will cite the license or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license, permit, or base property qualifications should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

(2) The hearing upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, including the value of any forage consumed, due the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages, including the value of any forage consumed, as determined in accordance with paragraph (c)(2) of this section, and directing the district manager to suspend, reduce, or revoke the license, permit, or base property qualifications or to deny renewal, if the facts so warrant.

(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a willful or wanton violation of any provision of this part or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the District manager may refuse to issue or renew a license or permit, or the State Director may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of this subpart or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary of any matter under § 9239.3–2 shall be made in accordance with the applicable provisions of § 4122.2–5 of this chapter and Appeals and Contests Parts 1840 and 1850 of this chapter.

SUBCHAPTER A—GENERAL MANAGEMENT
(1000)

Group 1800—Public Administrative Procedures

PART 1850—HEARINGS PROCEDURES

(Note: Subpart 1853 consists of special hearings procedures for "Inside Grazing Districts")

Subpart 1853—Grazing Proceedings (Inside Grazing Districts)

1853.1 Appeal to hearing examiner; motion to dismiss.
1853.2 Time and place of hearing; notice; intervenors.
1853.3 Authority of examiner.
1853.4 Service.
1853.5 Conduct of hearing.
1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.
1853.7 Appeals to the Director and the Secretary.
1853.8 Effect of decision suspended during appeal.
1853.9 Conditions of decision action.

§ 1853.1 Appeal to hearing examiner; motion to dismiss.

(a) Any applicant whose interest is adversely affected by a final decision of the district manager may appeal to an examiner by filing his appeal in the office of the district manager within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the decision of the district manager is in error. All grounds of error not stated will be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the examiner.

(b) Any applicant for a grazing license or permit or any other person who, after proper notification, fails to protest or appeal a decision of the district manager within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in such final decision.

(c) When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(d) The district manager will promptly forward the appeal to the State Director. Within thirty days after his receipt of the appeal the State Director may file on behalf of the district manager a written motion, serving a copy thereof upon the appellant, requesting that the appeal be dismissed for the reason that it is frivolous, the appeal was filed late, the errors are not clearly and concisely stated, the issues are immaterial, the issue or issues were included in a prior final decision from which no timely appeal was made, or all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The appellant may file a written answer within twenty days after service of the motion upon him. The appeal, motion, the proofs of service, and the answers will be transmitted to the examiner, who shall rule on the motion, and, if the motion is sustained, dismiss the appeal by written order.

§ 1853.2 Time and place of hearing; notice; intervenors.

At least thirty days before the date set the district manager will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the district manager may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the examiner as an intervenor in the appeal.

§ 1853.3 Authority of examiner.

(a) The examiner is vested with the duty and general authority to conduct the hearing in an orderly, impartial and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a decision. The examiner shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by § 1850.0–7, to the extent such regulation is applicable.

(b) The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with § 1852.3–3, and when the ends of justice will be served thereby. Continuances will not be granted unless they are clearly justified and timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the district manager and on other parties. The district manager and other parties shall have five days from receipt of the request to file objection to the continuance. The examiner will then rule on the request, and, if granted, set a new date for the hearing. The district manager will notify all interested persons of the new date.

§ 1853.4 Service.

Service of notice or other documents required under this subpart shall be governed by § 1850.0-6(e). Proof of such service shall be filed in the same office where the notice or document was filed within fifteeen days after such service, unless filed with the notice or document.

§ 1853.5 Conduct of hearing.

(a) The appellant, the State director or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented. Issues which appear to the examiner to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the State director or his representative, unless the examiner rules that such issue is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties.

(b) Unless the examiner orders otherwise, the State director or his representative will then make the opening statement, setting forth the facts leading to the appeal (or issuance of the show cause order where that is involved). Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the examiner, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under this subpart as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the examiner.

(c) In the absence or upon denial of such motion the State Director or his representative and recognized intervenors may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every ruling of the examiner will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the opposing party may then make an offer of proof in rebuttal. The examiner will summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

§ 1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.

(a) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law unless waiver has been stipulated, and will render a decision upon all material issues of fact and law presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any further appeal. A copy of the decision shall be sent by certified mail to the appellant and all intervenors, or their attorneys of record.

(b) The Director may require, in any designated case, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by Subpart 1844.

§ 1853.7 Appeals to the Director and the Secretary.

(a) *Notice of appeal to the Director; furnishing copies of the transcript.* Within ten days after the receipt of the decision of the examiner any party, including the State director or his representative, desiring to appeal to the Director shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the State director without charge, and to other appellants and to the intervenors, at a charge of ten cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervenor is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed through the office of the Hearing Examiner.

(b) *Appeals to the Director.* An appeal from any decision of the examiner shall be filed in the Office of the Director, Bureau of Land Management, Department of the Interior, Washington, D.C., 20240, together with any brief in support thereof, within thirty days after date of receipt of the transcript of testimony, or, if the transcript is not requested, within thirty days after receipt of the examiner's decision. Within the same period a copy of the appeal and of any brief must be served on each party named in the examiner's decision, and upon the State Director, either personally or by certified mail. Any party, including the State Director, opposing the appeal will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in the Office of the Director a reply brief, a copy of which must be served on the appellant(s) in the same manner and the same period. The appeal in other respects shall be made in accordance with Part 1840, except that no filing fee is required.

(c) *Appeals to the Secretary of the Interior.* An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with Subpart 1844.

§ 1853.8 Effect of decision suspended during appeal.

(a) An appeal shall suspend the effect of the decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing privileges to be granted under the current application, an appellant who was granted grazing privileges in the preceding year may continue to use such privileges pending final action on the appeal, unless the decision appealed from is made immediately effective, as herein next provided.

(b) When the orderly administration of the range or other public interest so requires, (1) the district manager may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (2) the examiner or the Director may provide in the decision on an appeal before such officer, that it shall be in full force and effect pending decision on any further appeal; (3) the Director or the Secretary may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the district manager pursuant to a decision shall be subject to modification or revocation by the Examiner, Director, or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under section 10(c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

§ 1853.9 Conditions of decision action.

(a) *Record as Basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the State Director and as supported by and in accordance with the reliable, probative and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

(b) *Effect of substantial compliance.* No adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4110 of this chapter.

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS AND EXCLUSIVE OF ALASKA); GENERAL

Subpart 4120—Grazing Administration (Outside Grazing Districts and Exclusive of Alaska); General

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Subpart 4120—Grazing Administration (Outside Grazing Districts and Exclusive of Alaska); General

§ 4120.1 Authority.

(a) Section 15 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1275, as amended, 43 U.S.C. 315m) vests discretionary authority in the Secretary of the Interior to lease for grazing purposes vacant, unappropriated, and unreserved public lands in the continental United States, exclusive of Alaska, which are not within established grazing districts.

(b) Section 4 of the O&C Act of August 28, 1937 (50 Stat. 875; 43 U.S.C. 1181d) vests in the Secretary of the Interior discretionary authority to lease for grazing purposes any revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in the State of Oregon, hereafter referred to as O&C lands, which may be so used without interfering with the production of timber or other purposes specified in section 1 of the Act, and to formulate rules and regulations for the use, protection, improvement, and rehabilitation of such grazing lands.

(c) The Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986 as amended; 43 U.S.C. 1411–1418) expressly authorizes the Secretary of the Interior to determine which of the lands exclusively administered by him through the Bureau of Land Management are suitable for retention and management under the principles of multiple use and sustained yield. Section 5 of the Act (78 Stat. 987; 43 U.S.C. 1415) defines multiple use and sustained yield.

§ 4120.2 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized agent.

(b) "Director" means the Director of the Bureau of Land Management or his authorized agent.

(c) "State Director" means the supervisory Bureau of Land Management official for the state in which the particular range lies, or his authorized agent.

(d) "Authorized Officer" means the Bureau of Land Management District Manager or Area Manager, to whom has been delegated the authority to take action.

(e) "District Office" means the Office of the Bureau of Land Management having direct management responsibility and administrative jurisdiction over the specific public lands involved.

(f) "Animal unit month" means the amount of forage necessary for the sustenance of one cow, or its equivalent for a period of 1 month.

(g) "Grazing capacity" means the total animal unit months of forage available from a tract or tracts of forage land during a given period.

(h) "Management area" means a designated tract or geographic area of land capable of being properly managed as a unit for multiple-use to ensure a sustained yield of forage without jeopardy to other resources or uses of the land. Such a management area may require joint use by two or more lessees.

(i) "Allotment management plan" means a program of action designed to reach specific management goals.

(j) "Grazing system" means a specified sequence of livestock grazing by designated area to accomplish management objectives.

(k) "Preference land" means the privately owned or controlled land upon which the issuance of a grazing lease is based.

(l) "Contiguous land" means land that borders upon or touches upon public land.

Subpart 4121—Awards of Grazing Leases

§ 4121.1 Qualifications of applicants.

§ 4121.1–1 Minimum qualification requirements.

An applicant for a grazing lease is qualified if:

(a) He is a person engaged in the livestock business, has a need for the grazing use of the land, and is a citizen of the United States[1] or;

(b) It is a group or association authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, all members of which are qualified under paragraph (a) of this section, provided that the agreement or articles of association under which the association has been formed are approved by the State Director, or;

(c) It is a corporation, the controlling interest in which is vested in persons qualified under paragraph (a) of this section and which is authorized to do business under the laws of the State in which grazing privileges sought are to be exercised: *Provided,* That the articles of incorporation have been approved by the Authorized Officer.

§ 4121.1–2 Effect of transfer arising through operation of law.

The acquisition of rights in preference land by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding lease, or preclude the renewal of a lease based upon such land, for a period of 2 years after such acquisition. Upon the failure of such person to qualify within the 2-year period, the lease will be subject to cancellation in accordance with § 4125.1–1(h).

§ 4121.2 Adjudication of applications for grazing leases.

§ 4121.2–1 Minimum requirements, rating and classification of lease land.

(a) *Land resource consideration.* The Authorized Officer will determine the availability of public land for grazing leases and the amount of forage available for use by livestock in conjunction with considerations of forage reservations for watershed protection, wildlife, and other multiple uses.

(b) *Grazing capacity, seasons of use, and maximum annual period of use.* The Authorized Officer will establish the grazing capacity, determine the kind and class of livestock use to be proper for each management area and classify each area for the proper seasons of use and for the maximum period of time for which the lessee will be allowed to use the leased land therein during any one year, except that where the leased land consists chiefly of isolated or fragmented tracts of land which are not proposed for long-term retention and management, the Authorized Officer may establish the grazing capacity only.

(c) *Applicants.* Grazing leases may be issued to qualified applicants to the extent that public land is available in the following order and amounts:

(1) To applicants who are the owners, lessees, or other lawful occupants of contiguous private lands to the extent necessary to permit proper use of such contiguous lands. When the public land consists of an isolated or disconnected tract embracing 760 acres or less, owners, lessees, or other lawful occupants of lands contiguous thereto or cornering thereon shall have a preference right to lease the whole of such tract, upon terms and conditions prescribed by the Secretary: *Provided,* That the preference right must be asserted during a period of 90 days after such tract is offered for lease.

(2) To applicants owning, leasing, or lawfully occupying noncontiguous lands to the extent necessary to permit the proper use of such noncontiguous lands.

(3) To other applicants.

(d) *Conflicting applications.* (1) When more than one qualified applicant applies for the same public land and it appears that a division of the area may be made and will not result in improper land use, the Authorized Officer will allow the applicants an opportunity, within a specified time limit which he shall set, to agree to a division of the lands. A division of the lands may be made either by agreement between the conflicting applicants which is acceptable to the Authorized Officer, or by determination of the Authorized Officer where no acceptable agreement is reached. However, where it appears that a division of the land would result in improper land use, or where proper land use management will be advanced thereby, the Authorized Officer may require that joint use be made of the management area.

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[1] See 43 CFR 1811.1 regarding evidence of citizenship status.

(2) The Authorized Officer will allocate the use of the public land on the basis of any or all of the following factors: (i) Historical use, (ii) proper range management and use of water for livestock, (iii) proper use of the preference lands, (iv) general needs of the applicants, (v) topography, (vi) public ingress and egress across preference lands to public lands under application[2] (where access is not presently available), and (vii) other land use requirements.

§ 4121.2–2 Leases of withdrawn or reserved lands, preference right leases for lands restored from withdrawal.

(a) The Authorized Officer may issue grazing leases for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[3] if the use of the land for grazing is consistent with the purposes of the withdrawal. Lands included in stock driveway and public water reserve withdrawals may be leased in accordance with subpart 2321 of this chapter. Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed for the protection and use of the land for the purpose for which it was withdrawn or reserved.

(b) Where public lands are restored from a withdrawal and the Authorized Officer determines that a grazing lease for the lands may be issued, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the land immediately prior to their restoration, shall have a superior preference right to lease the restored public lands previously used by him. The preference right must be asserted by an application for a grazing lease (see § 4125.1–1(a)(1)), and must be filed within 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior grazing lease, license, permit or other authority upon which the superior preference claim is based.

§ 4121.3 Adjustments of grazing use.

§ 4121.3–2 Increases.

Increases in grazing capacity, when determined by the Authorized Officer, will be apportioned in a manner that will assist in the stabilization of the livestock operations after consideration of other land uses.

§ 4121.3–3 Decreases.

(a) Downward adjustments in authorized grazing use may be imposed during the term of a grazing lease where, for example, the lease erroneously includes lands not subject to lease, or authorizes use in excess of the grazing capacity of the leased land, or where a downward adjustment is required to facilitate other proper multiple uses on the area, or similar situations.

(b) Adjustments to balance authorized use with the proper stocking rate of the management area will be apportioned equitably or as agreed to among the lessees and the Authorized Officer. Such adjustments may be made by authorizing fewer livestock, or a shorter grazing season, or by both methods as determined by the Authorized Officer.

(c) The Authorized Officer will notify each affected lessee by certified mail of his decision to make an adjustment in authorized use to reach the proper stocking rate of any leased area. The notice will state the manner in which the adjustment is to be made and will allow 30 days from receipt thereof in which the lessee may file an appeal in accordance with § 4125.1–3. If no appeal is filed within the 30-day period, the adjustment will be made in accordance with the decision and no further appeal will be allowed. If a timely appeal is filed, the adjustment under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the final decision will be applied to its full extent for the grazing season immediately following the effective date of the decision.

(d) Public lands under a grazing lease issued pursuant to this part are subject to classification, withdrawal, or other disposal under the Taylor Grazing Act, the O&C Act, or other applicable public land laws. Reasonable notice of a pending or proposed classification, withdrawal, or disposal which might result in a diminution of the area of the leased land will be given to the lessee, consistent with Subpart 2411 of this chapter and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Part 1840 of this chapter.

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[2] Where the United States obtains such a right-of-way, it will assume responsibility therefor to the full extent authorized by law.

[3] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of Feb. 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with principles of section 15 leases, under authority of subsection (I) of section 4, Act of Dec. 5, 1924 (43 Stat. 703, 43 U.S.C. sec. 501). Those lands withdrawn for reclamation purposes which are not subject to the cooperative agreement of Feb. 28, 1945, will upon restoration from the reclamation withdrawal, become subject to the provisions of paragraph (b) of this section.

Subpart 4122—Management Practices

§ 4122.1 Management considerations.

§ 4122.1–1 Multiple use.

All use and management practices, include grazing and the issuance of grazing leases, shall be in conformance with the concepts of multiple use and sustained yield (see 43 CFR 2410.0–5 (o) and (p)). Any public lands leased under the regulations of this part which are suitable for multiple use shall be managed for multiple use to the fullest extent possible, including provision of adequate access for the various multiple users. The Authorized Officer will negotiate for such access with the appropriate applicant(s) or lessee(s), utilizing Department of the Interior easement or acquisition procedures. Should negotiations prove ineffective, the United States will acquire the necessary access by appropriate legal procedures.

§ 4122.1–2 Areas of limited multiple use values.

On areas of public land with limited multiple use values the Authorized Officer may issue leases based on grazing capacity of the area only, or may include livestock numbers and season and time of use. Grazing leases based on the criteria of this section are usually for isolated and fragmented tracts of public land. However, the multiple use values involved, not size of the public land area, will be the determining factor.

§ 4122.1–3 Areas of important multiple use values.

(a) On areas of public land with important multiple use values in addition to livestock grazing or where the primary use is for sustained livestock grazing, the Authorized Officer may, before the grazing lease is issued, or where an existing lease provides for the issuance of an allotment management plan, develop in cooperation with the lease applicant or lessee an allotment management plan. Such plan shall be incorporated into the lease as a part of the terms and conditions of the lease. The plan shall provide for the proper use and conservation of the public lands, at the same time providing for the lessee the maximum possible operations flexibility. The management plan will identify objectives for the allotment, a grazing system and procedures for evaluation of management.

(b) In the absence of mutual agreement between the lessee and the Authorized Officer on an allotment management plan, the Authorized Officer may, in lieu of such plan, stipulate as a condition of the lease grazing system requirements necessary to assure proper management of the public land and its resources. In such cases the Authorized Officer may issue short-term leases until such time as he determines that the grazing system requirements are adequate to assure proper multiple use management of the public land.

§ 4122.2 Designations of grazing areas for exclusive use by specified classes of animals.

When necessary for the proper use or orderly administration of a lease area, the Authorized Officer may designate certain areas for use exclusively by a certain kind or class of livestock or wildlife.

§ 4122.3 General rules of the range.

The acts prohibited and rules of fair range practice as detailed in § 4112.3–1 and § 4112.3–2 of this chapter shall apply to all leases issued under the regulations in Part 4120.

Subpart 4123—Supervision and Inspection

§ 4123.1 Procedures for enforcement of rules and regulations.

A grazing lease may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the grazing lease, or for a violation of the Taylor Grazing Act or of the O&C Act or of any of the provisions of this Part. (See § 9239.3–1 of this chapter for detailed regulations). The lease of public lands for livestock grazing under these regulations in no way limits the Bureau's authority to protect the lands against unauthorized use or occupancy.

Subpart 4124—Local Associations

§ 4124.1 Local associations of stockmen.

Grazing associations formed by lessees will be recognized in accordance with regulations detailed in § 4114.4.

Subpart 4125—Records and Administrative Procedures

§ 4125.1 Procedures.

§ 4125.1–1 Leasing procedures; requirements and conditions.

(a) *Filing and action on lease applications.* (1) An application for a grazing lease shall be executed on a form approved by the Director and filed in the District Office of the Bureau of Land Management having management responsibility over the public lands applied for in the application. Proof of ownership or control of contiguous lands may be required by the Authorized Officer where the applicant seeks to assert a preference right.

(2) A service fee of $10 will be charged for all applications to lease public lands including initial applications and those made pursuant to assignments and consolidations. However, no fee will be charged for consolidations requested by the Authorized Officer or for a regular renewal of an existing lease.

(3) Applications to lease lands included in existing grazing leases, including lease renewals, must be filed not less than 30 days nor more than 90 days prior to the expiration of the current lease. An application not filed within this period

may be rejected by the Authorized Officer as not timely filed. Applications for lands not under lease may be filed at any time.

(4) A timely filed application for renewal of an existing grazing lease does not confer on the lessee any right to a renewal but will authorize the continued grazing use of the lands by the lessee in accordance with the provisions of the existing lease pending final action on the application for renewal. The fee for such extended use shall be consistent with the then current fee schedule.

(5) An application for a grazing lease must describe the lands applied for by one of the following methods: (i) By legal subdivisions, or (ii) by metes and bounds description, or (iii) by designated management area.

(6) An application for a grazing lease may include O&C lands or public lands or combinations thereof.

(b) *No right is conferred by application prior to lease.* Since the issuance of a grazing lease is discretionary, the filing of an application for lands not then under lease does not create any right in the applicant to use the lands applied for pending the issuance of a grazing lease.

(c) *Action on defective and nonallowable applications.* (1) The Authorized Officer may require any defects in an application be corrected or additional information to be furnished. The Authorized Officer may reject any application if the applicant fails to correct defects in the application or fails to provide the additional information within the time allowed, which period shall not be less than fifteen (15) days from the date of receipt by the applicant of notice of such defects or required information.

(2) The Authorized Officer shall reject the application if the land applied for (i) is in an allowed entry, (ii) is otherwise appropriated or reserved and not subject to lease under the Taylor Grazing Act or the O&C Act, (iii) is not public land, (iv) is under existing grazing lease, or (v) is of such character that livestock grazing would be detrimental to the resources or other uses of the land.

(d) *Consolidations.* A consolidation of leases held by a lessee may be requested by the lessee on a renewal application or may be required by the Authorized Officer on his own motion. The term of the consolidated lease shall be determined through negotiation between the lessee and the Authorized Officer.

(e) *Protests and appeals*—(1) *Protests.* A protest against the approval of an application for a lease should be filled in the same office where the application for a grazing lease was filed; it should describe the lands involved, contain a complete disclosure of all facts upon which the protest is based, and be accompanied by evidence of service on the applicant of a copy of the protest. The Authorized Officer will consider the protest, and will serve a copy of his decision on the affected parties in person or by certified mail, and in accordance with § 4125.1–3 will advise the protestant and other parties of their right to appeal to the Director.

(2) *Appeal by applicant.* The lease will be executed by the Authorized Officer and transmitted to the lessee only after final action action is taken on any protest or appeals which may have been filed. The applicant's signature to the lease shall constitute his acceptance of the lease as executed by the Authorized Officer. Nonacceptance of the lease does not prejudice the applicant's right to appeal.

(f) *Additional requirements and stipulations.* In addition to the provisions set forth in the standard Grazing Lease Form, the lease will provide for the multiple use requirements of the area, the number of livestock to be grazed, proper grazing seasons, allotment management plan, grazing system, reservation for authorized trailing, and any other conditions or requirements which the Authorized Officer may deem necessary and proper, except as provided under §§ 4121.2–1(b), 4122.1–2, and 4122.1–3.

(g) *Subleases.* No part of the lease land may be subleased by the lessee. The grazing on the lease area of livestock not owned or controlled by the lessee with or without the lessee's consent is prohibited.

(h) *Cancellation or reduction of leases; show cause, appeal to Director.* Leases are subject to cancellation or reduction for the lessee's failure to comply with the terms of the lease or the provisions of this part of the regulations, or in any case that a lease confers use in excess of that properly allowable. In any such case the Authorized Officer will notify the lessee that the lease is being held for cancellation or reduction in whole or in part, and will allow the lessee fifteen (15) days from receipt of the notice within which to show cause why such action should not be taken. The notice will fully set forth the reasons for the proposed action, specifically referring to the pertinent provisions of the regulations, and will be served on the lessee personally or by certified mail. The Authorized Officer will consider any cause shown and, if not satisfied as to its sufficiency, or if no cause is shown, he will notify the lessee personally or by certified mail that the lease has been cancelled or reduced as the case may be. Such decision is subject to appeal to the Director in accordance with § 4125.1–3.

(i) *Terms and conditions.* The issuance and continued effectiveness of all grazing leases will be subject to the following terms and conditions.

(1) A grazing lease will authorize grazing use not in excess of the grazing capacity available for use by livestock as determined by the Authorized Officer in accordance with § 4121.2–1(b).

(2) Grazing leases will provide for the grazing of livestock on the leased land only during that part or parts of the year for which the area has been classified as proper for use, except as provided in § 4121.2–1(b).

(3) Upon the diminution of the public land used under any grazing lease due to withdrawal, appropriation, selection, or otherwise, the lease will be adjusted proportionately to the reduced grazing

capacity and the grazing fee will be adjusted accordingly commencing with the ensuing lease year.

(4) The grazing lease will be terminated in whole or in part because of loss of control by the lessee of non-Federal lands that have been recognized as the basis for a grazing lease.

(5) The area of the leased land may be reduced if it is determined that the land is required for the protection of forest plantations or sources of community water supply; or for recreation facilities, wildlife habitat, stock driveways, roads, trails, townsites; or for other public purposes. When it is determined by the Authorized Officer that the leased land is excessive to the lessee's need or that the lessee is not making substantial use of the leased land, the Authorized Officer may cancel the lease, reduce the acreage of the grazing lease, or reduce the grazing use allowed in accordance with the provisions of § 4125.1–1(h). In the case of any such acreage reduction a proportionate fee adjustment will be made. If the entire grazing lease is cancelled, the Director may refund any portion of the grazing fees paid for the cancelled lease term.

(6) The Authorized Officer may establish the size and boundaries of a grazing lease area to facilitate the proper and effective management of the resources. In so doing, he will give consideration to seasons of use, topography, and establishment of systems of grazing and any other pertinent factors. He may determine that two or more applicants shall be authorized to use the public land within a management area.

(7) The Authorized Officer may make adjustments in grazing leases at any time when necessary to comply with these regulations for the public lands.

(8) If necessary to rehabilitate the vegetative resources on the public land, the Authorized Officer may temporarily close the leased land to grazing or reduce livestock use whenever vegetal cover is depleted due to drought, epidemic, fire or any other cause, or for rehabilitation of the area. Such action will not exclude the closed area from the grazing lease.

(9) Authorized grazing use of the leased land may be adjusted by the Authorized Officer to conform to needed refinements in the allotment management plan as a result of more accurate determinations of grazing capacity, season and area of use, class of livestock, etc. Proportionate adjustment will be made in the annual grazing fee for the subsequent grazing season.

(10) The issuance of a grazing lease does not alter or restrict the authorized public use of the leased land including, but not limited to, hunting, fishing, camping, or hiking on such lands in accordance with the laws of the United States or of the State in which the lands are located, nor may the lessee interfere in any manner with the proper exercise of such rights. Neither shall the lessee maintain locked gates, signs, or other devices which prevent or interfere with public use of the leased land. Nor shall the lessee restrict or limit prospecting, locating, developing, mining, or patenting the mineral resources in the public land; miners, prospectors, and mineral lessees of the United States and all other authorized persons shall be entitled to enter the leased land for all lawful purposes.

(11) The Authorized Officer may require the lessee, as a condition to the granting and continued effectiveness of grazing leases, to fence or to contribute an equitable share to the cost of fencing the allotted areas and the maintenance of such fences.

(j) *Change in grazing seasons.* Any lessee who desires to use the leased land for a period or periods other than those authorized by his lease may, upon written approval of the Authorized Officer and prior to his annual billing notice, be allowed to use the amount of his authorized grazing use during any other period of time for which the lease area is classified as proper for use: *Provided:*

(1) Adjustment in season, time, or numbers does not result in an increase in the number of animal unit months utilized;

(2) Such use will not be detrimental to the resources of the leased area; and

(3) Such use will not adversely affect other lessees.

(k) *Interest of Members of Congress prohibited.* No Member of or delegate to Congress shall be admitted to any share or part of any grazing lease issued or to derive any benefit to arise therefrom (41 U.S.C. sec. 22; 18 U.S.C. sec. 431–433).

l) *Exchange-of-use agreements.* The Authorized Officer may enter into an exchange-of-use agreement with any applicant having ownership or control of non-Federal land interspersed with and normally grazed in conjunction with the surrounding public land. The grazing use authorized, will be without payment of fees, and will not exceed the grazing capacity of such non-Federal land.

(m) *Fees for grazing leases and crossing permits*—(1) *Lease rates.* Each holder of a grazing lease will be charged annual grazing fees for the animal unit months (AUM's) authorized by the grazing lease, at a rate per animal unit month (AUM). All grazing fee billings shall be issued in accordance with the rates prescribed in subdivision (ii) of this subparagraph. All livestock six (6) months of age or over allowed on the leased area will be considered as a part of the total number for which a lease has been issued. No fees will be charged for livestock under 6 months of age.

(i) A minimum annual charge of $10 will be made on all leases.

(ii) The rate or rates per AUM for the fee year, beginning March 1 and ending the last day of February, will be established by the Director, and notice thereof shall be published in the Federal Register. The rate or rates will become effective as of the date of such publication and will be applied to all billing notices issued thereafter.

(2) *Crossing permits.* Upon application filed with the Authorized Officer by any person showing the necessity for crossing the public lands with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of 1 cent per head per day for cattle, 2 cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited that no substantial amount of forage will be consumed in transit.

(3) *Payment of rental fees and effect of failure to pay.* No grazing lease or renewal thereof shall be executed by the Authorized Officer until payment of all fees due the United States under the regulations in this part has been made. The first grazing fee payment must be made within 15 days of receipt of billing; if not paid within that time, the lease shall not be issued by the Authorized Officer. Upon timely payment of the first grazing fee payment, the lease will be executed and forwarded to the lessee. Subsequent annual grazing fee payments are due the United States upon receipt of the billing notice and are payable in advance of the first grazing period for the full amount as indicated on the fee notice. No lease shall be effective to authorize grazing use thereunder until such advance payment has been made. A lease may be canceled pursuant to § 4125.1–1 (h) for failure to make timely payment.

(4) *Refunds.* No refunds of grazing fees properly paid in accordance with the regulations in this part and the terms of the grazing lease will be made because of the lessee's failure to make full grazing use as authorized by the lease. However, during periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of livestock disease during the life of the grazing lease, the Director on proper application may remit, refund, reduce in whole or in part, or postpone the payment of grazing fees for such period of depletion or general epidemic as he may determine. No part of the grazing fee paid will be refunded because of cancellation, relinquishment, or assignment, except as provided in § 4125.1–1(i) (3), (5), (8), and (9).

(n) *Period of lease.* A grazing lease or lease renewal may be issued for any period not in excess of 10 years and may be limited by the Authorized Officer to the term of a lease or control of lands that have been recognized as the basis for the grazing lease.

§ 4125.1–2 Assignment and relinquishment of grazing lease.

(a) *Assignment of grazing lease.* The lessee may assign a grazing lease only with the consent of the Authorized Officer; provided that the assignee has control of preference lands. The Authorized Officer will require the assignee to furnish proof of ownership or control of preference lands. The proposed assignment must be made on a form approved by the Director and must be filed with the Authorized Officer within 90 days from date of its execution. It must contain all the terms and conditions agreed upon between the parties and will be made effective only for the unexpired period of the assignor's lease. The assignment, properly executed and signed by the assignor, and the new application signed by the assignee will constitute the assignee's acceptance of the terms of the grazing lease. No assignment will be recognized or confer on the assignee any right to use the leased area until approved by the Authorized Officer. Advance grazing fees paid by the assignor may be credited to the assignee. All cooperative agreements and permits to construct or maintain range improvements on the leased land must be assigned at the time of the grazing lease assignment.

(b) *Relinquishment of grazing lease.* Upon written request, the Authorized Officer may accept a grazing lease relinquishment, in whole or in part, provided that all fees and charges then due have been paid.

§ 4125.1–3 Appeals.

Any applicant or lessee whose interest is adversely affected by a final decision of the Authorized Officer may appeal to the Director, and from the Director to the Secretary, in accordance with the procedure for appeals and contests set forth in Part 1840 of this chapter.

§ 4125.1–4 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the leased lands*—(1) *Qualifications of applicant for range improvement permit.* An applicant for a permit to construct or maintain range improvements, or to use and maintain range improvements constructed and owned by a prior occupant of the leased land, must be qualified under § 4121.1–1 and hold a valid lease.

(2) *Applications.* Applications for permits must be approved prior to construction. Applications for permits must be filed with the Authorized Officer on a form approved by the Director. Construction of range improvements without an approved permit may result in cancellation of the grazing lease as provided in § 4125.1–1(h).

(3) *Appeals.* The Authorized Officer will act on the application and such action shall be final unless the applicant appeals in accordance with § 4125.1–3.

(4) *Assignments.* Assignments of range improvement permits must be be filed with the Authorized Officer on a form approved by the Director and are not effective until approved by the Authorized Officer.

(5) *Permit standards.* The Authorized Officer will specify the minimum Bureau of Land Management standards and design for all range improvements. Failure to comply with the standards and design

may result in cancellation of the range improvement permit and/or the grazing lease as provided in § 4125.1–1(h).

(6) *Cooperative agreements.* A lessee may enter into a cooperative agreement with the Authorized Officer to construct and maintain range improvements upon the leased land. Failure to comply with the terms of such an agreement within a reasonable time, as allowed by the Authorized Officer, may result in the cancellation of the agreement and/or the grazing lease as provided in § 4125.1–1(h). A cooperative agreement for range improvements shall be made on a form approved by the Director.

(7) *Removal of improvements; compensation for loss of improvements.* (i) When a grazing lease expires or is terminated, the Authorized Officer may require an applicant for a subsequent lease to agree to compensate the prior lessee for the current value of his share of the cost of authorized permanent improvements placed on the leased land. The prior lessee must file a written application for compensation within 30 days after the date of termination or expiration of his lease or the date of the final decision terminating it. The amount of compensation shall be determined in accordance with § 4125.1–4(a)(8)(i). The failure of the new lessee to pay the prior lessee in accordance with such agreement shall be cause for cancellation of the new grazing lease.

(ii) The leasee will be allowed ninety (90) days from the date of expiration or termination of the grazing lease within which to remove improvements not disposed of in the manner set forth in subdivision (i) of this subparagraph; if not removed or otherwise disposed of within the said period or any extension thereof granted by the Authorized Officer, such improvements shall become the property of the United States. No improvements may be removed if the lessee is in default with respect to the grazing lease.

(8) *Leased land subject to disposition; compensation for loss of improvements.* (i) Ordinarily, before an application for disposal of leased lands under the public land laws is allowed, the applicant must agree to compensate the lessee or other party for any authorized range improvements in which the lessee or other party has a financial investment. If the parties are unable to agree to the amount, manner, and time for compensation for such improvements, such matters shall be determined by the Authorized Officer. The failure of the applicant to comply with the agreement or the conditions fixed by the Authorized Officer shall be cause for cancellation of any right or interest in the land acquired by the applicant by reason of the allowance of the application. If improvements have been constructed in whole or in part with Federal funds, are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), the application may be allowed in the discretion of the Authorized Officer without compensation to the United States for its share of the value of the improvements. In such cases, the Authorized Officer shall determine whether the grazing improvements are needed by the United States and whether the probable salvage value is sufficient to warrant removal of the salvageable materials.

(b) *Contributions for administration, protection, and improvement of public lands.* The Authorized Officer may accept contributions, made under section 9 of the Taylor Grazing Act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction.

(1) Any individual, association, corporation, State or local body or private group, may enter into an agreement with the Authorized Officer with respect to such contribution.

§ 4125.1–5 Pledge of leases as security for loans.

(a) A grazing lease may be pledged as security for a loan from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may obtain from the Authorized Officer a written statement concerning the status of the grazing lease and related information. A service charge of $10 will be made for searching the records, except that Federal and State lending agencies shall be exempt from such charge.

(b) A borrower-lessee desiring an extension of the grazing lease term may file a request therefor with the Authorized Officer, setting forth the name of the lending agency, purpose and amount of the loan, and the need for an extension of the grazing lease. If the Authorized Officer determines that an extension will not conflict with the applicable laws and is not contrary to the public interest, he may issue a new grazing lease for a period up to 10 years from the date of the loan but not to exceed the period of the loan.

(c) If the preference land of a lessee is acquired by a lending agency through foreclosure or otherwise, the agency, its grantees and lessees, or parties authorized by it to occupy the preference lands, may, if qualified, file an application for the issuance of a new grazing lease. If, in selling the property, the lending agency takes back the mortgage on the property, the agency will receive the same administrative consideration as in the case of an original loan.

(d) Where a lending agency files notice with the Authorized Officer that it has made a loan and has accepted a grazing lease as security, such agency will be advised of any adverse action taken affecting the lease. The failure of the Bureau of Land Management to give timely notice of any such adverse action shall impose no liability or obligation on the Bureau of Land Management or any of its employees.

SUBCHAPTER I—TECHNICAL SERVICES (9000)

Group 9200—Protection

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

§ 9239.3 Grazing.

§ 9239.3–1 Outside grazing districts.

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this subpart or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts.

(b) A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated shall be in default and shall be subject to the provisions of § 4122.6 of this chapter. In addition he may be subject to trespass action in accordance with the practices and procedures in §§ 9239.3–2(a), 9239.3–2(c) (1), (2), (3), (4), 9239.3–2(d), and 9239.3–2(g) of this chapter, modified so far as practicable and necessary to include Federal land outside of established grazing districts.

(c) When the alleged trespasser is not a lessee of lands under the regulations of this subpart the signing officer may take action against the trespasser in accordance with the practices and procedures in §§ 9239.3–2(a), 9239.3–2(c) (1), (2), (3), (4), 9239.3–2(d), and 9239.3–2(g) of this chapter modified so far as practicable and necessary to include lands subject to lease under the provisions of this subpart or within a stock driveway.

This Circular replaces and revokes Circulars 2217, 2245 (Part 4120, 33 F.R. 11516), and that portion of Circular 2220 relating to Part 4120.

Circular No. 2190

MARCH 3, 1849

GRAZING REGULATIONS
for the
PUBLIC LANDS

U.S. DEPARTMENT OF THE INTERIOR

Stewart L. Udall, Secretary

BUREAU OF LAND MANAGEMENT

Charles H. Stoddard, Director

May 1965

PREFACE

The regulations contained herein are applicable to the use, management, and protection of 178,000,000 acres public land administered under the authority and provisions of the Taylor Grazing Act of June 28, 1934, as amended and supplemented.

Part 4110, Grazing Administration (Inside Grazing Districts) is applicable to the 159,000,000 acres of grazing land administered by the Bureau of Land Management's 58 grazing districts. It provides the necessary regulations pursuant to Section 3 of the Taylor Grazing Act for intensive management of the public lands.

Part 4120, Grazing Administration (Outside Grazing Districts), provides regulations (pursuant to Section 15 of the Taylor Grazing Act) for the use and management of the 19,000,000 acres of leased lands that have not been included within grazing districts because of their scattered location pattern.

Subpart 9239, Trespass - Grazing, provides grazing trespass regulations, including disciplinary actions resulting from the commitment of acts prohibited and violation of the rules of fair range practice.

Subpart 1853, Hearings Procedures - Grazing, provides regulations, within grazing districts, for the handling and processing of appeals.

These regulations now represent many modifications of the original regulations. Such amendments have been found necessary to meet more effectively the objectives of the Act by improving the orderly use of the land, preventing overgrazing and range depletion, and stabilizing the livestock industry dependent upon the public land.

This publication is a consolidation of the primary regulations used in the management of the public lands administered pursuant to the Taylor Grazing Act both inside and outside the statutory grazing districts and is intended to facilitate BLM operations.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—RANGE MANAGEMENT (4000)

Group 4100—Grazing Administration

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

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AUTHORITY: The provisions of this Part 4110 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 315a.

SOURCE: The provisions of this Part 4110 appear at 29 F.R. 4602, Mar. 31, 1964, unless otherwise noted.

Subpart 4110—Grazing Administration (Inside Grazing Districts); General

§ 4110.0–2 Objectives.

Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promtoe the highest use of the public lands within grazing districts which have been or hereafter are established, possession or control of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the Federal range will be required of all users.

§ 4110.0–3 Authority.

(a) *Saving clause.* So far as practicable and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in § 4110.0–2, the provisions of this Subpart 4110 will not be applied to the prejudice of the position of anyone who on the date of approval of this part was the holder of a grazing license or permit or who on that date had pending an application therefor.

§ 4110.0–5 Definitions.

Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management in or pursuant to the Federal Range Code for Grazing Districts (this part), unless the context otherwise requires:

(a) The "act" means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315, 315a–315r), as amended and supplemented.

(b) "The Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) The "Secretary" means the Secretary of the Interior or his authorized agent.

(d) The "Director" means the Director of the Bureau of Land Management or his authorized agent.

(e) "State Director" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(f) "Federal range" means land within established grazing districts administered by the Bureau of Land Management under the Federal Range Code for Grazing Districts (this part), including the vacant, unappropriated, and unreserved public land of the United States chiefly valuable for grazing and forage crops; State, county, and privately owned land leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land.

(g) "Property" means privately owned or controlled land or water used in range livestock operations.

(h) "Base property" means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(i) "Base property qualifications" means the maximum amount of grazing privileges on Federal range properly allowable to base properties in class 1 or class 2.

(j) "Forage land" means land the principal use of which is the production of natural or cultivated feed for livestock.

(k)(1) "Land dependent by use" means forage land other than Federal range of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the "priority period", was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years of such priority period in connection with substantially the same part of the public domain, now part of the Federal range. Such land may be (i) parallel land, i.e., land of the same character, interspersed with, and grazed at the same time as the Federal range on which grazing privileges may be granted, except in those grazing districts which by special rule have excluded parallel land as base property, (ii) land of different character than the Federal range and which properly supports the permitted livestock during all or part of the period that the Federal range is closed to grazing, or (iii) a combination of these two types of land. The priority period shall be the five-year period immediately preceding June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) No land shall be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year after the date when the Federal range used in creating the dependency by use first became a part of a grazing district, except that if the Federal range used in creating the dependency by use became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date. Only the last set of base properties used during the priority period by a livestock operation can be invested with dependency by use by such operation.

(3) The extent to which grazing licenses or permits will be granted on the basis of dependency by use of land, shall be governed by the following:

(i) It shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of any two consecutive years or any three years in which use was actually made during the priority period, whichever is more favorable to the applicant, on that part of the public land which, at the time of the issuance of the license or permit, is Federal range.

(ii) It shall not exceed the amount of forage needed for the number of livestock creating such dependency by use that were customarily and properly sustained on the base property during the priority period and continue to use such property to the same extent, except that in no instance shall the use of base property be for less than the minimum period established under § 4111.2–1. The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that necessary for the proper support of the number of livestock used in creating the dependency by use (class 1) the base property, to the extent of such excess forage capacity, may be treated as dependent by location (class 2) if so qualified.

(iii) Whenever the dependency by use of two or more base properties was created by the use of all or part of the same Federal range, during the same or at different seasons of the year, by two or more livestock operations, the relative dependency by use of each of the base properties shall be proportionate to the average annual use actually and properly made of the Federal range during the priority period by each of the livestock operations.

(l) "Land dependent by location" means forage land other than Federal range, which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(m) "Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by the grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under § 4115.2–1(k)(2), the charge for one horse grazing on the Federal range for one month shall be at twice the rate charged for one cow grazing for the same period.

(n) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(o) "Full-time water" means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(p)(1) "Prior water" is water which, during all or not less than two years of the priority period was used to service certain public domain now part of the Federal range for a livestock operation that was established, permanent, and continuing, and which normally involved the grazing of livestock on the same areas of public land for a certain portion or portions of the years of such use. For the purpose of this definition the priority period shall be the five-year period immediately preceding June 28, 1934, except that in any area placed within a grazing district or added to an existing district by boundary modification after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) Where a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, have served to invest such water with the attribute of priority, but such livestock operation subsequently ceased using such water or waters and used other water or waters in such manner as to invest them, too, with priority, only the latter water or waters shall be considered as prior, unless the former are also prior because of use by another livestock operation.

(3) No water shall be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district except that when such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

(4) The extent to which grazing privileges will be granted on the basis of the priority of water shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of the years in which use was actually made during the priority period, on substantially that part of the public lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(q) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

(r) "Adjudication of grazing privileges" is the determination of the qualifications for grazing privileges of the base properties, land § 4110.0-5 (k)(1)) or water (§ 4110.0-5 (p)(1)) offered in support of applications for grazing licenses or permits in a range unit or area, and the subsequent equitable apportionment among the applicants of the forage production within the proper grazing season and capacity of the particular unit or area of Federal range, and acceptance by the applicants of the grazing privileges based upon the apportionment or its substantiation in a decision by an examiner, the Director, or the Secretary upon appeal. (Applicable provisions are Subpart 4111 and § 4115.2-3.)

Subpart 4111—Awards of Grazing Privileges

§ 4111.1 Qualifications of applicants.

§ 4111.1-1 Qualifications.

An applicant for a grazing license or permit is qualified if engaged in the livestock business and:

(a) Is a citizen of the United States, or

(b) Has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen or a valid petition for naturalization, or

(c) Is a group, association, or corporation authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, and the controlling interest in which is vested in persons who would be qualified as individual applicants under paragraphs (a) or (b) of this section.

§ 4111.1-2 Effect of transfer arising through operation of law.

The acquisition of rights in base property by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, based on such property, for a period of two years after such acquisition. Upon the failure of such person to qualify within the two year period the license or permit will be subject to cancellation in accordance with § 4115.2–1(d).

§ 4111.2 Base property qualifications and classification.

§ 4111.2–1 Minimum requirements; classification of base properties.

(a) The District Manager, after recommendation by the advisory board, shall establish minimum base property requirements as a condition of qualification for the issuance of a license or permit in each district or unit thereof, taking into consideration the availability of base properties for proper use with and their relative dependence upon Federal range, land and water conditions, and other factors affecting livestock operations in the area according to customary use and best practices for good range management.

(b) The District Manager after recommendation by the advisory board will classify base properties as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

§ 4111.3 Adjudication and apportionment of grazing privileges.

§ 4111.3–1 Mandatory requirements; rating and classification of Federal Range.

(a) *Grazing capacity; seasons and maximum annual period of use.* The District Manager, after recommendation by the advisory board, will rate the grazing capacity of each unit or area in a grazing district and will classify each for the proper seasons of use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range therein during any one year.

(b) *Wildlife; allowance for maintenance.* In each grazing district a sufficient grazing capacity of Federal range suitable for wildlife will be reserved by the District Manager after consulting with wildlife interests and the advisory board, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *Preference applicants.* Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in a livestock business, bona fide occupants or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner specified in paragraph (d) of this section. Provision will be made for other applicants so far as Federal range remains available.

(d) *Order of preference.* Licenses or permits will be issued in the following order:

(1) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(2) *Regular licenses and permits; number of livestock.* Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

§ 4111.3–2 Procedures.

(a) *Unit-wide or area-wide adjudication.* (1) The District Manager, after recommendation by the advisory board, may make a simultaneous classification under § 4111.2–1of all offered base properties within a single administrative unit or grazing area and may allocate in a single action the available Federal range within the unit or area upon which such base properties are dependent.

(2) The District Manager shall give written notice by certified mail of such classification and allocation to the persons offering such base properties, naming a place and date not less than 30 days thereafter to file protest to the advisory board, in accordance with § 4115.2–1(b). Thereafter, and provided there is then pending a valid application for grazing privileges, the District Manager will render his final decision thereon and will allow the right of appeal to the examiner in accordance with § 4115.2–3.

(b) *Permits; annual licenses.* Grazing permits may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing; a recommendation thereon made by the advisory board, and approval thereof given by the District Manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the grazing regulations for grazing districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. The practice of issuing an annual license will be continued until such time as a permit is issued. Upon the issuance of a permit any outstanding license or part thereof which has been granted on the same qualifications on which the permit is based will terminate. Upon expiration of a term permit an annual license may be issued, pending issuance of a new term permit.

(c) *Allotments.* Allotments of Federal range will be made to licensees or permittees when conditions warrant. Division of the range by agreement or former practice will be followed where practicable, provided such division is in substantial conformity with the qualifications for grazing privileges of the respective applicants and the agreement is reduced to writing and approved by the District Manager.

(d) *Administration of lands additionally available; preference right for lands restored from withdrawal.* (1) Any land within the exterior boundaries of a grazing district made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315M–1—315M–4), by the revocation of a withdrawal, or by the cancellation or relinquishment of a homestead entry or claim, or otherwise, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management.

(2) Where public lands are restored from withdrawal and the District Manager determines that the lands are available for grazing use, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to their restoration, shall have a superior preference to the further grazing use of such lands: The preference right must be asserted and an application for license or permit, on a form approved by the Director obtainable from the District Manager must be filed with that officer not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The District Manager may issue to such applicant an annual license or a term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act. 43 U.S.C., 1952 ed., sec. 315(h).)

§ 4111.4 Adjustments of grazing privileges.

§ 4111.4–2 Increase.

Increases in grazing capacity, when conditions warrant, and after recommendation of the advisory board and approval of the District Manager, will be apportioned in a manner that will assist in the stabilization of livestock operations controlling qualified base property, with emphasis being given to the restoration of reductions that have been imposed to reach the grazing capacity of a particular allotment or range area, and to allocation of increased grazing capacity to operators or interests whose efforts were responsible for such increases.

§ 4111.4–3 Reduction.

(a) Downward adjustments will be imposed in the following order:

(1) Nonrenewable licenses.

(2) Regular licenses or permits to the extent, if any, to which they have been issued in excess of the base property qualifications or have otherwise been improperly issued.

(3) Regular licenses or permits properly issued, on an equal percentage basis.

(b) Base property qualifications will be adjusted, after licenses or permits have been issued, to the extent that such base property qualifications exceed the long-term forage production potential of any area of Federal range. Adjustments required below the forage production potential of any area of Federal range, after licenses or permits have been issued, to balance authorized use with the proper stocking rate of the Federal range, will be apportioned equitably or as agreed to among the qualified licensees or permittees and the District Manager after recommendation by the district advisory board. Such adjustments may be made either by authorizing less livestock or less time or by both methods as determined by the District Manager.

(c) When the District Manager determines that the forage production potential, with improvements, of the Federal range area is significantly greater than the present allowable stocking rate, he will issue combination active use and suspended nonuse licenses or permits for not to exceed the forage production potential, except that at his option, and after obtaining advice from the district advisory board, he may apply paragraph 2(d) of this section in making the adjustment. The difference between the forage production potential and the present allowable stocking rate of the Federal range area will be held in a suspense status, provided that the aggregate of authorized active use and "suspended nonuse" shall not exceed the base property qualifications of any licensee or permittee.

(d) When the District Manager, after recommendation by the district advisory board, determines that the imposition of the full amount of downward adjustment in authorized active use necessary to reach the proper stocking rate of a Federal range area would impose a serious hardship on the range users, he is not required to impose the full amount of the adjustment forthwith, but will schedule a percentage of the required adjustment during each of the three years immediately following the District Manager's determination as the circumstances in each case may warrant, except that when the total adjustment is less than 15 percent of the total authorized active use, it will be imposed forthwith in the full amount.

(e) The District Manager will notify each affected licensee or permittee by certified mail of his decision to make an adjustment in authorized active use to reach the proper stocking rate of any Federal range area and of the manner in which the adjustment is to be made. The District Manager's decision will allow 30 days from receipt thereof in which the licensee or permittee may file an appeal in accordance with § 4115.2–3 and § 1853.1 of this chapter. If no appeal is filed within the 30-day period, the adjustment will be in accordance with the District Manager's decision and no further appeal will be allowed even though the adjustment may be scheduled under paragraph 2(d) of this section. If any timely appeal is filed, after receipt of the District Manager's decision notice, the adjustment for the entire area of Federal range under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the ultimate decision will be applied to its full extent for the next grazing season immediately following the effective date of that decision. If, however, the final decision on the appeal is rendered within the 3-year adjustment period established by the District Manager's decision notice, the required adjustment may be apportioned over the remaining portion of that period. In the event that the orderly administration of the Federal range or other public interest so requires, any decision may be placed in full force and effect in accordance with the provisions of §1853.8(b) of this chapter.

(f) Federal range lands to be used under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of a pending or proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with subpart 2412 of this chapter, and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Parts 1840 and 1850 of this chapter.

Subpart 4112—Management Practices

§ 4112.2 Designation of ranges for particular kinds of livestock.

The District Manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the Federal range.

§ 4112.3 General rules of the range.

§ 4112.3–1 Acts prohibited.

The following acts are prohibited on the Federal range:

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(b) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(c) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(d) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(e) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the District Manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(f) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(g) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

§ 4112.3–2 Rules of fair range practice.

All licensees and permittees shall comply with the following rules of fair range practice:

(a) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating to the branding of livestock and sanitary requirements shall be followed.

(b) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the District Manager.

(c) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the District Manager. Upon request by the majority of the users of any community allotment of Federal range, the District Manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

(d) When so requested by the State Director or District Manager, the licensee or permittee shall join with the Bureau of Land Management in preparing a fire plan which shall set forth in detail the program for prevention, control, and extinguishment of fires, including the responsibility of the licensee or permittee for action on his range allotment and on adjacent Federal range.

Subpart 4113—Supervision and Inspection

§ 4113.1 Procedure for enforcement of rules and regulations.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule. (Refer to § 9239.3-2 of this chapter for detailed enforcement procedures.)

Subpart 4114—Advisory Boards and Local Associations

§ 4114.1 Grazing district advisory boards.

§ 4114.1-1 Authorization for establishment; number of members; qualifications.

The State Director shall fix the number of members to be recommended by election for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be recommended by election, but shall be selected directly by the State Director. The State Director may fix the number of district advisers to be recommended by election as representatives of each class of stockman, according to the kind of livestock owned, or may fix the number to be recommended by election from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to recommend one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

§ 4114.1-2 Election, time and place; the general procedures.

All district advisers, except wildlife representatives, shall be recommended by election in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management, and published in the FEDERAL REGISTER. An election to recommend district advisers for appointments for each grazing district will be held within 90 days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons recommended by election for appointment at the first election after establishment of a grazing district, or at the first election during the 1964 calendar year, may be recommended for appointment and annual reappointment for a maximum period of three consecutive years; or the District Manager may divide the group, by lot, as evenly as possible into three groups to be considered as being recommended for appointment or reappointment for one year, two consecutive years, or three consecutive years respectively. Thereafter, elections will be held annually, for each group whose term of recommendation for appointment has expired, in accordance with the options set forth in the General Procedures for Grazing District Advisory Board Elections.

§ 4114.1-3 Appointment; term of office; removal; vacancies.

A person recommended by election for appointment as district adviser shall assume office only after he has been appointed by the State Director and has taken the oath of office. The State Director may, in his discretion, appoint those in group 1 for a period not to exceed 365 days; those in group 2 for an initial period of 365 days and thereafter a subsequent like period; and those in group three for an initial period of 365 days and thereafter two successive like periods. The State Director may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of the district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the District Manager, shall be transmitted to the State Director for consideration. A person selected to fill a vacancy shall be appointed for the remainder of the unexpired 365-day period, after which a person shall be recommended by election for the balance of the period of recommendation at the next regular election. The wildlife representative will be appointed by the State Director for a term of office that does not exceed 365 days.

§ 4114.1–4 Meetings; organization.

District advisory boards shall meet at any time and place within or near the district designated by the State Director or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licenses or permits or any other business.

§ 4114.1–5 Functions and duties of district advisers; limitations.

District advisers shall advise or make recommendations on the following matters:

(a) The qualifications, classification, and requirements of base property.

(b) The transfer and relinquishment of base property qualifications.

(c) The grazing capacity of the Federal range in the district.

(d) Application for all types of grazing licenses or permits, including nonuse, or extension of use: *Provided,* That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(e) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(f) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of this part.

(g) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(h) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(i) Proper rules of fair range practice.

(j) Allotments of range by classes of livestock or for community or individual use.

(k) Seasonal use of the Federal range or any part thereof.

(l) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(m) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(n) Any recommendations made by local associations of stockmen in the district.

(o) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(p) Special rules for the district, within meaning of § 4115.2–4.

(q) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

§ 4114.2 State advisory boards.

§ 4114.2–1 Membership and meetings.

The livestock members of each grazing district advisory board shall select from their number at the first meeting of the board after each election, two members and two alternates to serve on a State advisory board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State will select one of their number and one alternate to serve as a wildlife member on the State advisory board. In addition, the State advisory board will have one or more additional members, but not exceeding seven, who will represent other interests such as forestry, minerals, soil conservation, outdoor recreation, urban and suburban development, county government, and State government. Such additional members and their alternates will be selected by the State Director from nominations made by State or local government officers or organizations reflecing nonlivestock interests in the management or disposition of public lands. The time and place for meetings of the

State advisory board shall be set by the State Director. The board shall select from its members one member to be chairman of the board. The co-chairman of the board shall be the State Director.

§ 4114.2–2 Functions and duties.

The State advisory boards shall consider and make recommendations on grazing, wildlife, forestry, outdoor recreation, minerals, soil conservation, urban and suburban development, and other resource administration policies or problems affecting the State as a whole. The operations of the State boards, including their meetings shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.3 National Advisory Board Council.

§ 4114.3–1 Membership and meetings.

The livestock members of each State advisory board shall select from their number, at its first meeting of each new term, one member and one alternate representing cattle and horses, and one member and one alternate representing sheep and goats, to serve on the National Advisory Board Council. The elected wildlife member or his alternate on each State advisory board will serve on the National Advisory Board Council representing wildlife interests. The State Director from each of the ten Western States with organized grazing districts shall submit a list of nominees, selected from the nonlivestock and nonwildlife membership on the State board. From this list, and other sources as he may determine, the Secretary of the Interior or his authorized representative shall appoint members, not exceeding ten in number, to the National Advisory Board Council to represent nonlivestock and nonwildlife interests. In addition to the above membership, one member from each of the States of Alaska and Washington will be appointed by the Secretary of the Interior or his authorized representative from a list submitted by the respective State Directors pursuant to nominations made by State or local government officers or organizations reflecting interests in grazing or other uses of public lands. The Council shall select from its members one member to be chairman of the Council. The co-chairman of the Council shall be an official of the Department of the Interior appointed by the Secretary of the Interior who shall set the time and place for such meetings of the National Advisory Board Council.

§ 4114.3–2 Functions and duties.

The National Advisory Board Council shall consider and make recommendations on policies and problems of a national scope related to all natural resource use and management. The operations of the National Council, including their meetings, shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.4 Local associations of stockmen.

§ 4114.4–1 Organization.

Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

§ 4114.4–2 Articles of incorporation; constitutions; by-laws.

Such associations shall be organized as corporations "not-for-profit", if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Director for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance which they are in conflict with the provisions of this part or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

§ 4114.4–3 Powers.

Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(a) To make contributions in cash,

property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(b) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district under permit issued by the Bureau.

(c) To act in an advisory capacity in the administration of the Federal range lying within the district.

(d) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes, contemplated by the act.

(e) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

§ 4114.4–4 Cooperative agreements for use of lands; obligation of licenses and permittees to share cost.

Whenever the grazing capacity of Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the District Manager after consideration of the recommendation of the association. The District Manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

Subpart 4115—Records and Administrative Procedures

§ 4115.2 Procedures.

§ 4115.2–1 License and permit procedures; requirements and conditions.

(a) *Filing and consideration of applications; interdistrict agreements; recommendations; service of notice.* (1) Each year a date will be set by the District Manager prior to which all applications for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) All applications for grazing licenses or permits will first be presented to the district advisory board for advice and recommendation: *Provided,* That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(3) Where a grazing area or unit is located in one district, but is administered by the District Manager of an adjacent district pursuant to a formal interdistrict agreement, applications for grazing licenses or permits on such area or unit shall be filed with the District Manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the District Manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the District Manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable and the District Manager approves, he will notify the applicant by ordinary mail, which notice may be the fee billing. If the advisory board recommendation is favorable but the District Manager disagrees, notice will be served on the applicant in person or by certified mail sent to his address of record, setting forth the recommendation of the advisory board and the Manager's disapproval, together with the reason or reasons for a prospective adverse decision, including a reference to

the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a date, not less than ten days thereafter, on or before which oral or written protest may be presented to the District Manager. If the recommendation of the board is to any extent adverse, notice will be served on the applicant in person or by certified mail sent to his address of record, setting out the reason or reasons given by the advisory board for the adverse recommendation, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficent, and naming a place and date, not less than ten days thereafter, when protest against the recommendation will be heard. The District Manager may also serve notice on any other applicant or applicants who may be directly affected by the adoption of the advisory board recommendation or the prospective decision of the Manager which will allow an appropriate protest. In any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may recommend that a protest meeting not be held, whereupon the District Manager may accept the recommendation of the board as its final consideration.

(b) *Protests; reconsideration by advisory boards; service of notice.* At the time and place fixed for the protest meeting, any licensee, permittee, or applicant may appear, in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the District Manager. If such recommendation is favorable to the protestant, and the District Manager approves, he will notify the protestant thereof by ordinary mail, which notice may be the fee billing. If the recommendation is to any extent adverse, and the District Manager approves, a notice giving the reason or reasons therefor will be served on the protestant in person or by certified mail, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts that serve as controlling factors. Such notice will constitute the District Manager's final decision for purposes of appeal.

(c) *Allowance or rejection of application; modification; service of notice.* The District Manager, in the light of all facts and circumstances and after reference to the advisory board, may issue or refuse to issue a grazing license or permit. When the District Manager takes an adverse action on any application, a notice including a recital of the specific reasons for the action taken will be served on the applicant in person or by certified mail. The notice will advise the applicant of his privilege to appeal to an examiner.

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of §§ 4111.1, 4115.2–1(e), 4115.2–1(k)(4), 4114.4–4 or 4115.2–5(a)(6). Except as otherwise specifically provided, in any such case or in any case in which it shall appear that a license or permit confers grazing privileges in excess of those properly allowable under this part, the District Manager will notify the licensee or permittee that the license or permit is thereby held for cancellation or reduction either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such action should not be made final. Such notice will set forth fully the reasons for the proposed action, specifically referring to the pertinent provisions of this part, and will be served on the licensee or permittee by certified mail or in person. In case of failure of the licensee or permittee to show cause within the time allowed, the license or permit will be canceled or reduced to the extent indicated in the notice. The District Manager will consider any cause shown and, if satisfied of its sufficiency, will close the case; if not satisfied as to its sufficiency, or if no cause is shown, he will notify the licensee or permittee in person or by certified mail that the cancellation or reduction will become final unless an appeal to the examiner is filed in accordance with § 4115.2–3(a).

(e) *Terms and conditions.* The issuance and continued effectiveness of all regular licenses and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation.

(2) No license or permit will provide for the grazing livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the grazing capacity of the Federal range to be used, as determined by the District Manager, except as may be allowed under § 4111.4–3 (c) and (d).

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(6) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately to the reduction in available grazing capacity caused by the loss of such Federal range.

(7) If a licensee or permittee for two consecutive years ceases to make substantial use of his base property in connection with his year-round livestock operation, the authorized use under such license or permit and the qualifications of the base property may be subject to reduction in proportion to the diminished use of the base property.

(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the District Manager; except that, if the licensee or permittee notifies the District Manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the District Manager shall determine; or

(ii) All or part of such other lands or grazing privileges as are necessary to his year-round operation, the license or permit will be subject to reduction in proportion to the loss of such necessary lands or grazing privileges unless the licensee or permittee notifies the District Manager within 30 days after such loss and thereafter within the time allowed by the District Manager after recommendation by the advisory board acquires ownership or control of other lands or grazing privileges sufficient to assure a year-round operation.

(9) Base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To include in an application for a license or permit or renewal thereof, the entire base property qualifications for active, nonuse, or combination of active and nonuse, except where the base property qualifications are included in an outstanding current term permit, or where the allowable use has been reduced under § 4111.4–3 (a) (3), (c), and 9239.3–2 (e) of this chapter.

(ii) To accept a license or permit issued pursuant to such application.

(10) The failure for any two consecutive years to make substantial use as determined by the District Manager, after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit, may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Nonuse, in whole or in part, of grazing privileges under a license or permit may be authorized by the District Manager, upon application by the licensee or permittee, after reference to the advisory board, for the following reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit in whole or in part may result in a proportionate loss of the base property qualifications supporting such license or permit.

(13) (i) No readjudication of any license or permit, including free use li-

cense, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

(ii) The Bureau of Land Management may make adjustments in licenses and permits at any time when necessary to comply with the Federal Range Code for Grazing Districts.

(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the District Manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s), as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the District Manager.

(iii) May take necessary action to enforce the requirements under subdivisions (i) and (ii) of this subparagraph, in accordance with the provisions of paragraph (d) of this section.

(f) *Interest of Member of Congress prohibited.* No Member of or Delegate to Congress shall be admitted to any share or part of any license or permit issued under the act, or to derive any benefit to arise therefrom. (41 U.S.C. sec. 22; 18 U.S.C. secs. 431–433.)

(g) *Change in grazing seasons.* Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license or permit may, upon written approval of the District Manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(1) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(2) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(3) Such use will not be detrimental to the Federal range, and

(4) Such use will not adversely affect other licensees or permittees.

(h) *Exchange-of-use agreements.* Exchange-of-use agreements may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land, without payment of grazing fees, provided that during the term of the agreement the Bureau shall have the management and control of such non-Federal land for grazing purposes.

(i) *Nonrenewable licenses.* Nonrenewable licenses may be issued to nonpreference applicants only for the period specified by the District Manager and for the number of livestock for which range is temporarily available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

(j) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U.S.C. App. 511(1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the District Manager an application, in duplicate, setting forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the District Manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner termi-

nated upon further application to the District Manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for not to exceed the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, or otherwise, such temporary license shall terminate as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the District Manager on an application for suspension of a license or permit under this paragraph may be appealed by the licensee or permittee to the Director, and from the Director to the Secretary of the Interior, in accordance with the rules of practice, Part 1850 of this chapter.

(k) *Fees for grazing licenses and permits*—(1) *Free-use licenses.* No fee will be charged for the issuance of a free-use license.

(2) *Licenses and permits; rates.* (i) Each regular licensee or permittee, and holder of a nonrenewable license will be charged fees, consisting of a grazing fee for use of the range and a range improvement fee, for the animal unit months authorized by the license or permit, at a rate per animal unit month. All billing shall be issued in accordance with the rates prescribed in subdivision (ii) of this subparagraph. All livestock 6 months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No fees will be charged for livestock under 6 months of age. Range improvement fees may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any State or Federal agency, or any person, association, or corporation. A minimum annual charge of $10 will be made on all regular licenses or permits, and nonrenewable licenses.

(ii) (*a*) The fee or fees for any fee year, beginning on March 1, will be established by the Secretary at a rate which is equivalent to a specified percentage, to be fixed by the Secretary, of the average of the prices per pound of beef and lamb, rounded to the nearest whole cent, which was paid to growers during the preceding calendar year in the markets of the 11 Western States, as determined by the Secretary based upon market prices as reported by the Department of Agriculture.

(*b*) The fee for any fee year may be changed by the Secretary from that of the preceding year by fixing a new specified percentage of the average of the prices per pound of beef and lamb. The fee for any fee year shall, in any event, be adjusted by the Secretary, in addition to any percentage adjustment that may be made, to conform to changes in market price conditions whenever in the preceding calendar year there is a change in the average of such prices, rounded off to the nearest whole cent, of 2 cents or more above or below the corresponding average for the preceding year.

(*c*) The fee or fees established by the Secretary for any fee year, including announcement of the portion thereof to be credited to the range improvement fund, will be published as a notice in the FEDERAL REGISTER. All regular billings shall be issued in accordance with the rate or rates prescribed in the notice.

(3) *Crossing permits.* Upon application filed with the District Manager by any person showing the necessity for

crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

(4) *Payment of fees; reduction or increase in numbers; modification of periods of use.* No license or permit shall be issued or renewed until payment of all fees due the United States under the Federal Range Code for Grazing Districts has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice and are payable in advance of the first grazing period and for the full amount indicated on the fee notice; no license or permit shall be effective to authorize grazing use thereunder until such advance payment has been made. A permit may be canceled or reduced pursuant to paragraph (d) of this section for failure to pay the fee in accordance with the fee notice. Any licensee or permittee who desires to make temporary use of the grazing privileges during any authorized grazing period or periods in a manner other than that authorized in his existing license or permit must file with the district manager a written request for such change in use at least 10 days prior to the beginning of any such grazing period. If the district manager approves the request he will issue an adjusted fee notice accordingly.

(5) *Refunds.* No refund of fees properly paid will be made because of an unauthorized failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(i) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Director may in his discretion credit, remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period so long as the emergency exists.

(ii) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be filed with the District Manager under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U.S.C. 95, et seq.), or such excess fees may be credited on subsequent fee notices.

§ 4115.2–2 Transfers and relinquishments.

(a) *Transfer of base property; effect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if qualified under § 4111.1–1, to so much of the grazing privileges as are based thereon. Except as otherwise herein provided, the existing license or permit and the grazing privileges thereunder shall automatically and without further notice be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property; except that further grazing under the license or permit may be temporarily extended pursuant to request and notification filed in accordance with § 4115.2–1(e)(8)(i); except, also, where the transfer arises as a result of testamentary disposition the existing license or permit may continue in effect until the end of the current grazing season. Thereafter applications for renewal of a license or permit shall be filed by the heirs, devisees, executor, administrator, or personal representative, as the case may be.

(2) A transferee shall, within 90 days from the date of transfer, file with the District Manager documentary evidence of the transfer and an application on a form approved by the Director for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred. Where, however, a transfer, or a different vesting in any manner, of a leasehold interest in land or water may result in interference with the stability of livestock operations or with proper range management, upon a finding to that effect by the District Manager, after reference to the advisory board, such land or water will lose its base property qualifications and grazing privileges based thereon will be denied.

(b) *Transfer of base property qualifications; limitations; consent of owner or encumbrancer; effect.* (1) A licensee or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 4111.1–1. An application for approval of a transfer shall be filed with the District Manager on a form approved by the Director for land base or water base.

(2) Transfer of base property qualifications may be made under the following conditions:

(i) When an applicant owns or controls base land or lands having a forage production in excess of that required to support the licensed or permitted livestock, the qualifications may be concentrated on that part of the property having the forage production required by and which will continue to be used for the support of such livestock.

(ii) When such qualifications are to be transferred from land owned or controlled by the applicant, to land owned or controlled by others, the transfer will be recognized only to the extent such qualifications do not exceed the forage production of the new base property.

(iii) When an applicant owns or controls base water, the qualifications may be transferred to another adequate water source which will service the same range area.

(3) No transfer will be allowed under this paragraph if it interferes with the stability of livestock operations or proper range management, or adversely affects the local economy. No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made, except that in an application for transfer of class 1 qualifications where the applicant for such transfer is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such consent will not be required. Upon approval of the application by the District Manager after reference to the advisory board, the transfer shall be effective as of the date of filing of the application, and the base property from which the transfer is made will thereupon lose its qualifications to the extent indicated in the transfer.

(c) *Relinquishment of base property qualifications; limitation; effect.* Upon request, the district manager may accept a written relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified: *Provided,* That no such relinquishment will be accepted without the written consent of the owner or owners, if other than the applicant, and any encumbrancer of the base property, except that if the applicant is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

§ 4115.2–3 Appeals and hearings.

Any applicant whose interest is adversely affected by a final decision of the District Manager may appeal to an Examiner in accordance with § 1853.1 of this chapter. The conduct of hearings are provided for in §§ 1853.2 through 1853.6 of this chapter. Appeals to the Director will be pursuant to § 1853.7 of this chapter supplemented by Part 1840 of this chapter. An appeal from a decision of the Director may be made to the Secretary of the Interior in accordance with Part 1840 of this chapter (see § 1853.7(c) of this chapter).

§ 4115.2–4 Special rules for grazing districts.

Whenever it appears to a State Director after considering the recommendation of the district advisory board that local conditions in any district make necessary the adoption of a special rule on any of the matters in this part in order better to achieve an administration consistent with the purposes of the act, he may, recommend such a rule, supported by a factual showing of its necessity, for the approval of the Director. Such rule, if approved, shall be published in the FEDERAL REGISTER.

§ 4115.2–5 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the Federal range.* (1) *Qualification of applicants for per-*

mits. An applicant for a permit to construct or maintain improvements under section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must be qualified under § 4111.1-1.

(2) *Applications.* Applications for such permits shall be filed in triplicate with the District Manager on a form approved by the Director.

(3) *Appeals.* The District Manager will act on the application after reference to the advisory board and such action shall be final unless the applicant or any interested party appeals in accordance with § 4115.2-3.

(4) *Assignments.* Assignments of section 4 permits shall be filed with the District Manager in triplicate on the authorized form and shall not be effective until approved by the District Manager.

(5) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* Where an application shows that the applicant and the prior occupant have not agreed on the value of such improvements owned by the latter, the District Manager will promptly, at the applicant's expense, cause the prior occupant to be served either personally or by certified mail with a notice of the filing of the application, and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or if the prior occupant applies within thirty days from the date of service for an appearance before the District Manager, then in the light of such evidence as the applicant and the prior occupant may present in such appearance, the District Manager will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken in accordance with § 4115.2-3. Upon the failure of the prior occupant to show cause or to apply within thirty days for an appearance, the reasonable value of the improvements will be determined by the District Manager but shall be not less than the amount alleged by the applicant in his application, and the decision of the District Manager in such case shall be final. In any case when a decision has become final, payment by the applicant of the amount determined and a showing that the improvements are free of all encumbrances may be required prior to favorable action on the application for use of such improvements, and on any application for grazing privileges involving the use of such improvements.

(6) *Cooperative agreements.* A licensee or permittee may enter into a cooperative agreement with the District Manager for the construction and maintenance of range improvements on the Federal range. Failure of the licensee or permittee to comply with the terms of such an agreement within a reasonable time as allowed by the District Manager may result in cancellation of the license or permit as provided in § 4115.2-1(d).

(7) *Applications for lands containing range improvements; compensation; reservation.* Public lands embraced in a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, or other public land laws, as specified in § 4111.4.

(i) When the disposal application covers land upon which range improvements have been placed pursuant to a permit authorized under section 4 of the act, the owner thereof may be required to remove the improvements; or if the improvements are of a permanent nature, the land applicant may be required to agree in writing to compensate the licensee, permittee, or other owner of such improvements located on the lands applied for an amount to be mutually agreed upon, or, if the parties are unable to agree, then in the amount and within the time for payment as determined by the District Manager in accordance with the applicable procedure under subparagraph (5) of this paragraph.

(ii)(*a*) When the disposal application covers public land upon which range improvements have been placed by the United States, or pursuant to a cooperative agreement heretofore or hereafter entered into between the Bureau and the licensee, permittee, and/or other cooperators, the disposal application will be referred by the land office manager to the District Manager for determination as to whether it may be allowed, notwithstanding such improvements, and, if so, whether with or without a reservation. If the application is to be allowed without a reservation of the improvements, the applicant may be required to agree in writing to compensate for the loss of such improvements in the amounts to be mutually agreed upon and payable separately to the Bureau and to the cooperators. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. In the event of disagreement, the District Manager shall determine the total amount of compensation due, as provided in subparagraph (5) of this paragraph, and the time for payment. Such amount shall then be payable separately to the Bureau and to the cooperators entitled thereto, in proportion to the amount or value of their respective contributions in money, material, or labor, to the total cost of the improvement, as made by them under the original cooperative agreement as specified by the District Manager.

(*b*) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the District Manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Director and to the Secretary, in accordance with the rules of practice (Part 1840 of this chapter).

(iii) Under the act of July 9, 1942, as amended (43 U.S.C. sec. 315q), the holder of a grazing license or permit shall be compensated for the losses sustained by reason of cancellation of or prevention of use of authorized grazing privileges resulting from the use of lands embraced in such license or permit for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the Federal department or agency making such use. Such payment shall be deemed payment in full for such losses.

(b) *Contributions for administration, protection, and improvement of public lands.* The District Manager may accept contributions under section 9 of the act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction in the States.

(1) Any individual, association, corporation, grazing district advisory board, State or local body or private group, may enter into an agreement with the District Manager with respect to such contribution. Where the contribution is to include money, the contributor should execute the appropriate form as requested by the District Manager.

(2) Contributions may be conditioned upon their use for specific projects or in specific localities.

(3) The District Manager may authorize refund of any amounts deposited in excess of the contributor's proper share of the expense incident to the purpose for which the contribution was made.

§ 4115.2–6 Pledge of licenses and permits as security loans.

(a) A license or permit may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the licensee's or permittee's livestock operations. Before making a loan, a lending agency may obtain from the District Manager a written statement concerning the status of the grazing license or permit and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) A borrower-permittee desiring an extension of the term of his permit may file a request therefor, in writing, with the District Manager, setting forth the name of the lending agency, purpose and amount of loan, and the need for the extension of the permit term. When it appears that such extension will be in accordance with applicable law and regulation and not contrary to the public interest, the District Manager, in his discretion, may extend the permit for a period not to exceed 10 years from the date of the loan, subject to the rules and regulations then in force and to such additional terms and conditions as the District Manager may provide. The provisions of this paragraph shall not be applicable to grazing licenses which are issued annually on a temporary basis prior to the issuance of term permits.

(c) If the base property to which the grazing privileges on the Federal range covered by the pledged license or permit are attached as a grazing unit is acquired by the lending agency through foreclosure or otherwise, such agency, or purchasers, lessees, or occupants of the property authorized by such agency, if qualified, may apply to be recognized as the successor licensee, or permittee. If in selling the property the lending agency takes back a mortgage on the base property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files with the District Manager notice that it has made a loan and has accepted a grazing license or permit as security therefor in conformity with the provisions of this section, the District Manager as a matter of cooperation will keep such agency advised of any adverse action affecting the license or permit, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the District Manager or the Bureau or any of its employees.

SUBCHAPTER I—TECHNICAL SERVICES (9000)

Group 9200—Protection

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

AUTHORITY: The provisions of this Part 9230 issued under R.S. 2478; 43 U.S.C. 1201.

§ 9239.3 Grazing.

§ 9239.3–2 Inside grazing districts.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule.

(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the range manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the range manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of this part or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the range manager he will close the case; if satisfactory showing is not made within the time allowed, the violations alleged in the notice will be deemed to have been willful and the range manager will notify the State Director thereof for further action under paragraph (e) of this section.

(b) *Violations clearly wilful; special circumstances.* Whenever it appears to the district manager that a violation is clearly wilful, grossly negligent, or repeated, or when the public health, safety, or interest requires, or when disciplinary action is advisable, the district manager will refer the matter directly to the State Director for further action under paragraph (c) or (e) of this section, whichever is appropriate.

(c) *Unlawful grazing on the Federal range; determination of damages; removal of livestock; impoundment.* (1) Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice on his lien with the range manager will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(2) Where the owner of the trespassing livestock, or his representative, is known, the district manager shall make a determination of the damage to the Federal range and other property of the United States and shall make a demand for payment upon the alleged violator, setting forth the foregoing values including the value of the forage consumed. Where the trespass grazing is not deemed to be clearly wilful the forage value shall be computed at the rate of $2 per animal unit month, or at the commercial rate if such rate is the higher; if the district manager deems the trespass grazing to be clearly wilful, grossly negligent, or repeated he shall compute the forage value at $4 per animal unit month, or at twice the commercial rate if such amount is the higher.

(3) In any case where neither the owner of the trespassing livestock, or his representative, is known, or where conservation of the Federal range and of the forage thereon requires it, the district manager, when so authorized by written order of the State Director, may take steps to remove the trespassing livestock by such methods and by such means not inconsistent with legislation which pro-

hibits the use of airborne or motor-driven vehicles in the gathering of horses or burros, as may be necessary, and to dispose of them by sale or otherwise within not less than five (5) days after public notice of his intention to make such disposition, subject to the right of any owner or registered lienholder of such trespassing livestock to redeem the livestock within such nondisposal period upon payment of:

(i) The damage to the Federal range and other property of the United States.

(ii) The cost of such impoundment and removal.

(iii) The value of any forage consumed as determined in accordance with subparagraph (2) of this paragraph.

(4) If the amounts found to be due the United States in accordance with subparagraph (3), subdivisions (i), (ii), and (iii) of this paragraph are contested by the owner of the livestock, his representative, or lienholder, the trespassing livestock may be redeemed by the posting of a cash or corporate surety bond in lieu of immediate payment. Such bond will be adequate to insure full satisfaction of the claims made. A hearing will then be scheduled before an examiner of the Bureau of Land Management. The hearing will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence will be confined to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass. The examiner will render a written decision assessing the amounts due.

(5) Where conservation of the Federal range and the forage thereon requires it, the State Director may temporarily close a grazing district or any portion thereof, to grazing by any class of livestock to be specified in such order. Notice of the order shall be published in a local newspaper and shall be posted at the County Courthouse of the County in which the closed area lies. The order shall require all owners of livestock affected thereby, to remove such livestock from the area within not less than five days from date of publication of the notice. Thereafter the range manager shall proceed to impound, remove, and dispose of, in the most humane manner in accordance with the provisions of this paragraph any such livestock trespassing or grazing in violation of the closing order.

(d) *Amicable settlement of civil cases involving unauthorized use of the Federal range or damage to Federal property.* Offers of settlement for the value of the forage consumed in trespass as determined in accordance with paragraph (c) (2) of this section and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provisions of the act or of the Federal Range Code for Grazing Districts in the amount of $2,000 or less may be accepted by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for the consumed forage and damage involved until finally accepted by the district manager or the State Director. Satisfaction of civil liability tdoes not relieve the alleged violator of any criminal liability under Federal law. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Director that disciplinary action is advisable because of a wilful, grossly negligent, or repeated violation, he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit and the section or sections of the Federal Range Code for Grazing Districts, or of the Act alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the value of the forage consumed, as determined in accordance with paragraph (c)(2) of this section. The notice will cite the license or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license, permit, or base property qualifications should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

(2) The hearing upon the order to show cause will be conducted so far as

practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, including the value of any forage consumed, due the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages, including the value of any forage consumed, as determined in accordance with paragraph (c)(2) of this section, and directing the district manager to suspend, reduce, or revoke the license, permit, or base property qualifications or to deny renewal, if the facts so warrant.

(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a willful or wanton violation of any provision of this part or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the range manager may refuse to issue or renew a license or permit, or the State Director may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of this subpart or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary of any matter under § 9239.3–2 shall be made in accordance with the applicable provisions of § 4122.2–5 of this chapter and Appeals and Contests Parts 1840 and 1850 of this chapter.

SUBCHAPTER A—GENERAL MANAGEMENT
(1000)

Group 1800—Public Administrative Procedures

PART 1850—HEARINGS PROCEDURES

(Note: Subpart 1853 consists of special hearings procedures for "Inside Grazing Districts")

Subpart 1853—Grazing Proceedings

1853.1 Appeal to hearing examiner; motion to dismiss.
1853.2 Time and place of hearing; notice; intervenors.
1853.3 Authority of examiner.
1853.4 Service.
1853.5 Conduct of hearing.
1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.
1853.7 Appeals to the Director and the Secretary.
1853.8 Effect of decision suspended during appeal.
1853.9 Conditions of decision action.

Subpart—1853 Grazing Proceedings

AUTHORITY: The provisions of this Subpart 1853 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 315a.

§ 1853.1 Appeal to hearing examiner; motion to dismiss.

(a) Any applicant whose interest is adversely affected by a final decision of the district manager may appeal to an examiner by filing his appeal in the office of the district manager within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the decision of the district manager is in error. All grounds of error not stated will be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the examiner.

(b) Any applicant for a grazing license or permit or any other person who, after proper notification, fails to protest or appeal a decision of the district manager within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in such final decision.

(c) When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(d) The district manager will promptly forward the appeal to the State Director. Within thirty days after his receipt of the appeal the State Director may file on behalf of the district manager a written motion, serving a copy thereof upon the appellant, requesting that the appeal be dismissed for the reason that it is frivolous, the appeal was filed late, the errors are not clearly and concisely stated, the issues are immaterial, the issue or issues were included in a prior final decision from which no timely appeal was made, or all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The appellant may file a written answer within twenty days after service of the motion upon him. The appeal, motion, the proofs of service, and the answers will be transmitted to the examiner, who shall rule on the motion, and, if the motion is sustained, dismiss the appeal by written order.

§ 1853.2 Time and place of hearing; notice; intervenors.

At least thirty days before the date set the district manager will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the district manager may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the examiner as an intervenor in the appeal.

§ 1853.3 Authority of examiner.

(a) The examiner is vested with the duty and general authority to conduct the hearing in an orderly, impartial and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a decision. The examiner shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by § 1850.0–7, to the extent such regulation is applicable.

(b) The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with § 1852.3–3, and when the ends of justice will be served thereby. Continuances will not be granted unless they are clearly justified and timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the district manager and on other parties. The district manager and other parties shall have five days from receipt of the request to file objection to the continuance. The examiner will then rule on the request, and, if granted, set a new date for the hearing. The district manager will notify all interested persons of the new date.

§ 1853.4 Service.

Service of notice or other documents required under this subpart shall be governed by § 1850.0–6(e). Proof of such service shall be filed in the same office where the notice or document was filed within fifteeen days after such service, unless filed with the notice or document.

§ 1853.5 Conduct of hearing.

(a) The appellant, the State director or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented. Issues which appear to the examiner to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the State director or his representative, unless the examiner rules that such issue is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties.

(b) Unless the examiner orders otherwise, the State director or his representative will then make the opening statement, setting forth the facts leading to the appeal (or issuance of the show cause order where that is involved). Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the examiner, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under this subpart as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the examiner.

(c) In the absence or upon denial of such motion the State Director or his representative and recognized intervenors may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every ruling of the examiner will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the opposing party may then make an offer of proof in rebuttal. The examiner will summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

§ 1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.

(a) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law unless waiver has been stipulated, and will render a decision upon all material issues of fact and law presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any further appeal. A copy of the decision shall be sent by certified mail to the appellant and all intervenors, or their attorneys of record.

(b) The Director may require, in any designated case, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by Subpart 1844.

§ 1853.7 Appeals to the Director and the Secretary.

(a) *Notice of appeal to the Director; furnishing copies of the transcript.* Within ten days after the receipt of the decision of the examiner any party, including the State director or his representative, desiring to appeal to the Director shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the State director without charge, and to other appellants and to the intervenors, at a charge of ten cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervenor is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed through the office of the Hearing Examiner.

(b) *Appeals to the Director.* An appeal from any decision of the examiner shall be filed in the Office of the Director, Bureau of Land Management, Department of the Interior, Washington, D.C., 20240, together with any brief in support thereof, within thirty days after date of receipt of the transcript of testimony, or, if the transcript is not requested, within thirty days after receipt of the examiner's decision. Within the same period a copy of the appeal and of any brief must be served on each party named in the examiner's decision, and upon the State Director, either personally or by certified mail. Any party, including the State Director, opposing the appeal will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in the Office of the Director a reply brief, a copy of which must be served on the appellant(s) in the same manner and the same period. The appeal in other respects shall be made in accordance with Part 1840, except that no filing fee is required.

(c) *Appeals to the Secretary of the Interior.* An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with Subpart 1844.

§ 1853.8 Effect of decision suspended during appeal.

(a) An appeal shall suspend the effect of the decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing privileges to be granted under the current application, an appellant who was granted grazing privileges in the preceding year may continue to use such privileges pending final action on the appeal, unless the decision appealed from is made immediately effective, as herein next provided.

(b) When the orderly administration of the range or other public interest so requires, (1) the district manager may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (2) the examiner or the Director may provide in the decision on an appeal before such officer, that it shall be in full force and effect pending decision on any further appeal; (3) the Director or the Secretary may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the district manager pursuant to a decision shall be subject to modification or revocation by the Examiner, Director, or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under section 10(c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

§ 1853.9 Conditions of decision action.

(a) *Record as Basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the State Director and as supported by and in accordance with the reliable, probative and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

(b) *Effect of substantial compliance.* No adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4110 of this chapter.

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS)

Subpart 4122—Grazing Leases (Sec. 15—Taylor Grazing Act)

Sec.

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AUTHORITY: The provisions of this Part 4120 issued under sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

Subpart 4122—Grazing Leases (Sec. 15—Taylor Grazing Act)

§ 4122.0–3 Authority.

Section 15 of the act of June 28, 1934 (48 Stat. 1275), as amended, authorizes the Secretary of the Interior to lease for grazing purposes vacant, unappropriated, and unreserved public lands outside of established grazing districts in the continental United States only.

§ 4122.0–5 Definitions.

(a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "State Director" means the proper State Director, Bureau of Land Management.

(d) "Manager" means manager of the proper land office. Where there is no land office, it means the Director, Bureau of Land Management.

(e) "Signing officer" means the Government official who has been duly authorized to issue a grazing lease.

(f) "Field office" means any office of the Bureau of Land Management, including the land office, near the lands applied for and in the State in which such lands are situated. If there is no land office or other field office in the State, it means the office of the Director, Bureau of Land Management, Washington 25, D.C.

(g) "The act" means the act of June 28, 1934 (48 Stat. 1269), as amended.

§ 4122.1 Conditions.

§ 4122.1–1 Qualifications of applicants.

An applicant for a grazing lease is qualified if the applicant

(a) Is a citizen of the United States, or

(b) Has filed a declaration of intention to become a citizen: *Provided*, That an applicant who has filed such declaration but has not filed a petition for naturalization before a court of competent jurisdiction within seven years from the date of filing the declaration or, having filed such petition, has failed to attain citizenship within a reasonable time thereafter and is unable to show any satisfactory reason for such failure, shall be disqualified to receive a grazing lease or any renewal of an existing lease until he has actually attained citizenship, or

(c) Is a group, association, or corporation which is authorized to conduct business under the laws of the State in which the lands applied for are located and the controlling interest in which is vested in a citizen or citizens or persons who would be qualified as individual applicants under paragraphs (a) and (b) of this section.

§ 4122.1–2 Classes of applicants; preference rights.

The act, as amended, provides for the issuance of grazing leases to classes of applicants in the following order:

(a) Preference-right leases to applicants who are the owners, homesteaders, lessees, or other lawful occupants of lands contiguous to or cornering on an isolated or disconnected tract embracing 760 acres or less for the whole of such tract, upon the terms and conditions prescribed by the Secretary, provided the preference-right is asserted during a period of 90 days after such tract is offered for leases.[1]

(b) Preference-right leases to applicants who are owners, homesteaders, lessees, or other lawful occupants of contiguous lands to the extent necessary to permit the proper use of such contiguous lands.

(c) Leases where no preference-right applicant is involved.

§ 4122.2 Application for lease.

§ 4122.2–1 Applications.

An application for lease shall be executed in triplicate on a form approved by the Director and filed in triplicate in any field office of the Bureau of Land Management in the state in which the lands applied for are situated.

§ 4122.2–2 Filing fee.

A filing fee of $10 will be charged for each grazing lease application, including an application arising out of the assignment of leased lands, when it embraces in whole or in part lands which are not already under lease by the applicant or by the assignor on the date of filing such application.

§ 4122.2–3 No right conferred by application prior to lease.

The filing of an application will not segregate the land applied for from application by other persons for a grazing lease or from other disposition under the public land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for pending the issuance of a lease. Any such unauthorized use constitutes a trespass.

§ 4122.2–4 Action on defective application or where the lands applied for are not subject to grazing leasing.

Upon the filing of any application, the officer receiving it may require any defects in the application to be cured or additional information to be provided. The signing officer may reject any application if the applicant fails to cure defects in the application within the time allowed, which period shall not be less than thirty days from the date of receipt of notice of such defects by the applicant. If the application must be rejected because of the status of the land for which application is made as where land is in an allowed entry, otherwise appropriated or reserved and not subject to lease under the act, or not public land, a manager, if his office has land status, or a signing officer shall reject the application.

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[1] Where the lands applied for include the even-numbered sections within the limits of a railroad grant, even though in the aggregate such lands exceed 760 acres, each such section will be considered as an isolated or disconnected tract within the meaning of this provision. The difference between the higher preference right accorded under this paragraph and the preference accorded under paragraph (b) of this section is that the applicant is not required to demonstrate that the public lands are necessary for the proper use of the contiguous or cornering lands, except where there are conflicting applications of the same class of applicants.

By Departmental Notice of July 31, 1937, all vacant, unreserved and unappropriated public lands, exclusive of Alaska, not included in an established grazing district, were then offered for lease under section 15; all lands not then subject to lease under section 15 because of their appropriation or reservation, were offered for lease as of the date any such lands first became subject to lease.

§ 4122.2–5 Conflicting applications.

In those cases where more than one applicant applies for the same land and where it appears that a division of the lands should be made, such conflicting applicants will be given an opportunity to agree to a division of the lands prior to a determination by the signing officer as to the disposition of such conflicting applications or division of the lands. After a division of the range has been made either by agreement between applicants which is acceptable to the signing officer or by determination of the signing officer where there is no acceptable agreement, any conflicting applications or protests filed subsequent thereto will be rejected.

§ 4122.2–6 Protests.

Protests against the approval of an application for a lease should be filed in the same manner and number of copies as applications for a grazing lease, contain a complete disclosure of all facts upon which the protest is based, and describe the lands involved in such protests and should be accompanied by evidence of service of a copy of the protest on the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protest is filed, the protest should also be accompanied by an application for a grazing lease.

§ 4122.3 Leases.

§ 4122.3–1 Issuance of leases.

(a) *Conditions.* The lease will be executed by the signing officer and transmitted to the lessee only after final action is taken on any protests or timely appeals which may have been filed. The applicant's signature to the application shall be considered to be his signature to and his acceptance of the lease when executed by the signing officer, without prejudice to the applicant's right to appeal from the disallowance of his application as to any part of the lands applied for or from the issuance of a lease for a shorter term than that applied for.

(b) *Term.* A lease may be issued for a period of not more than 10 years. Renewals may be for periods of not more than 10 years, upon such terms and conditions as may then be prescribed.

(c) *Application for renewals.* An application for renewal of lease should be executed and filed in triplicate on a form approved by the Director at least 90 days prior to the expiration of the lease. The application may also include a request for the consolidation of other outstanding grazing leases held by the lessee. Such application does not confer on the lessee any preference right to a renewal but will, however, authorize the exclusive grazing use of the lands by the lessee in accordance with the provisions of the lease pending final action on the application for renewal.

(d) *Requirements and stipulations.* The lease will provide for an allowance of forage for wildlife, and within the discretion of the signing officer the number of livestock to be grazed, proper grazing season or reservations for authorized trailing across the land, and will contain the standard provisions set forth in the combined application and lease form, together with any other terms, conditions, or reservations which the signing officer in his discretion may deem necessary and proper.

(e) *Subleases.* No part of the leased lands may be subleased.

§ 4122.3–2 Leases of withdrawn or reserved lands; preference right leases for lands restored from withdrawal.

(a) The signing officer may issue leases for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[2] if the use of the land for grazing is not inconsistent with the purposes of the withdrawal. Lands included in stock driveway and public water reserve withdrawals may be leased in accordance with § 2321.3 of this chapter. Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed for the protection and use of the land for the purpose for which it was withdrawn or reserved.

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[2] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of February 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with principles of section 15 leases, under authority of subsection (I) of section 4, act of December 5, 1924 (43 Stat. 703, 43 U.S.C. sec. 501). Those lands withdrawn for reclamation purposes which are not subject to the Cooperative Agreement of February 28, 1945, will, upon restoration from the reclamation withdrawal become subject to the provisions of paragraph (b) of this section.

(b) Where public lands are restored from a withdrawal and the signing officer determines that a grazing lease for the lands may be issued, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the land immediately prior to their restoration, shall have a superior preference right to lease the restored lands previously used by him. The preference right must be asserted and an application for lease on a form approved by the Director (see § 4122.2-1) must be filed not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The new lease will be dated as of the first day following the end of such current lease year, or as of the date of its issuance, in the discretion of the signing officer and for such term as he may determine.

§ 4122.3-3 Rentals, schedule of grazing fees; billing notices; effect of failure to pay.

(a) The annual rental charge for the use of the leased land will be based on the number of acres under lease, the estimated grazing capacity in AUMs (animal unit months), and the rate per AUM indicated in the then-current schedule of grazing fees established by the Director, Bureau of Land Management. The schedule of grazing fees will be established and may be modified, revised, or amended as the Director may determine from time to time and notice thereof shall be published in the FEDERAL REGISTER. The schedule rate will be effective (1) immediately as to new leases issued after date of publication; (2) 30 days after publication as to existing leases, the rental period of which begins after the 30-day period. The minimum rental on a lease shall not be less than $1 per annum.

(b) Rental groups: (1) Where the rental charge for a new lease is $50 or less for the full term of the lease, the entire amount shall be paid in advance and the rental charges will not be revised during the term of the lease. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5-3 and 4122.3-5.

(2) Where the rental for the entire lease term exceeds $50 and the rental for the first three-year period is $100 or less, the total amount for such three-year period shall be paid in advance. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5-3 and 4122.3-5. Rental charges may be revised at the end of each three-year period based on the grazing fee schedule then in effect. Billing notices will be issued prior to the termination of each three-year period and the rental is due and payable upon receipt of the billing notice.

(3) Where the amount of the rental charge for the first three-year period would exceed $100, the rental shall be charged and paid annually based on the then effective grazing fee schedule. A billing notice for the amount of such annual rental will be sent each lessee in advance and is due and payable upon receipt. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5-3 and 4122.3-5.

(c) Effect of failure to pay: The first rental payment required under a proposed lease in accordance with this section shall be made within 10 days from receipt of the lease form; if not paid within such time the lease shall be null and void and of no effect and all rights of the proposed lessee thereunder or under the application upon which it is based shall be considered as terminated. Subsequent rental payments for succeeding lease periods as required by paragraph (b) (2) or (3) of this section are payable in advance. In any event, if such payment is not received in the proper office by the last day of the current lease period, or within 10 days of lessees' receipt of the billing notice whichever is the later, then the lease shall be considered as cancelled and all rights thereunder terminated as of the end of such current lease period.

(d) No refund of rentals properly paid in accordance with the regulations in this part and the terms of the lease will be made because of a failure to use the grazing privileges granted by the lease, except that during periods of range depletion due to severe drouth or other natural causes or in case of a general epidemic of disease during the life of the lease the Director will in his discretion remit, refund, reduce in whole or in part, or postpone the payment of rentals for such period of depletion of general epidemic.

§ 4122.3–4 Assignment of lease.

The lessee may assign the lease only with the consent of the signing officer. The proposed assignment must be filed with the signing officer within 90 days from date of its execution, and shall contain all the terms and conditions agreed upon between the parties, and the assignee's agreement to be bound by the terms of the lease, together with triplicate copies of the combined application and lease form as approved by the Director, properly executed by the assignee, setting forth all the data required thereby. No assignment will be recognized nor will it confer on the assignee any rights to the leased area until a lease therefor is issued to him.

§ 4122.3–5 Lease lands subject to disposition; compensation to lessee for loss of improvements.

(a) Lands embraced in a grazing lease are subject to disposition under the provisions of the Act of June 28, 1934 (48 Stat. 1272, 1274), as amended, or other public land laws. Before any application for such disposition is allowed, evidence must be furnished that the applicant has agreed to compensate the lessee and the United States for any grazing improvements placed on the lands under the authority of the lease, permit, or cooperative agreement in an amount and manner to be mutually agreed upon. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lien or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. If the parties are unable to agree as to the amount, manner, and time for compensation for such improvements, the amount, manner, and time shall be fixed by the authorized officer. The failure of the applicant to comply with the agreement or the conditions fixed by the authorized officer shall be just cause for cancellation of any right or interest in the lands acquired by the applicant by reason of the allowance of his application.

(b) Where part of the leased lands are disposed of as provided by this section, the subsequent annual rental charges will be reduced proportionately to reflect the loss of the lands from the leasehold. Such reduced rentals shall apply to rentals for the lease years commencing subsequent to the notice of such reduction.

§ 4122.4 Construction, maintenance, and removal of improvements.

§ 4122.4–1 Permit required.

After the issuance of a lease, the lessee may fence the lands or any part thereof, develop water by wells, tanks, water holes, or otherwise, and make or construct other improvements for grazing or stock raising purposes, so long as such improvements do not impair the value of the lands or interfere with other uses: *Provided*, That a permit or cooperative agreement is obtained under the procedure set forth in this section. The lessee will be required to comply with the provisions of the laws of the state in which the leased lands are located with respect to the cost and maintenance of fences.

§ 4122.4–2 Applications for permits and cooperative agreements.

Applications for permits, cooperative agreements, or arrangements to construct and maintain range improvements shall set forth the location of such improvements by legal subdivision of the public land survey, the necessity, use, cost, and description of such improvements, item by item, shall designate the time and manner of their construction, the period of use, the method of operation, protection, repair, removal, or other disposition, and shall include any other pertinent information. When necessary to explain properly the improvements and matters connected therewith, the application shall be accompanied by a sketch of the improvements with specifications and a map showing the location of the improvements. Applications for a permit shall be made on a form approved by the Director and shall be filed in triplicate with the signing officer. Application for a cooperative agreement shall be made on a form approved by the Director.

§ 4122.4–3 Action on the application.

Action will be taken on the application by the signing officer. If the application is approved, the signing officer will issue a permit or enter into a cooperative agreement for the construction and maintenance of the improvements which have been approved.

§ 4122.4–4 Removal of improvements.

(a) Upon the expiration of the lease or its earlier termination, the signing officer may in his discretion and upon written application filed by the lessee not more than 30 days after date of such expiration or termination, require a proposed subsequent lessee, prior to the execution of a new lease, to agree to compensate the lessee for any grazing improvements of a permanent nature that have been placed upon the leased lands under authority of a section 15 lease executed prior to November 4, 1948, or thereafter, under a permit issued under § 4122.4–2. The amount of such compensation shall be determined in accordance with the procedure set forth in § 4122.3–5. The failure of the subsequent lessee to pay the lessee in accordance with such agreement shall be just cause for cancellation of the subsequent lessee's lease.

(b) The lessee will be allowed three months from the date of expiration or termination of the lease within which to remove such improvements as are not disposed of in the manner set forth above; if not removed or otherwise disposed of within the said period such improvements shall become the property of the United States. No improvements may be removed at any time the lessee is in default with respect to the lease.

§ 4122.5 Supervision and management of leased lands.

§ 4122.5–1 Access.

The issuance of a grazing lease does not alter or restrict the right of access across the leased lands by licensed hunters or fishermen or restrict their right to hunt and fish on such lands in accordance with the laws of the United States or of the state in which the lands are located, nor may the lessee interfere with such rights. Nor shall such lease restrict or limit prospecting, locating, developing, mining or patenting the mineral resources in the leased lands; miners, prospectors and mineral lessees of the United States and all other authorized persons shall be entitled to enter the leased lands.

§ 4122.5–2 Inspection of leased premises.

The land described in the lease shall be subject to inspection at all reasonable times by duly authorized representatives of the Department of the Interior. Other Federal agents, as well as game wardens, shall be permitted access to the lands in connection with necessary official business.

§ 4122.5–3 Reduction in leased area; adjustment of grazing use to conform with changes in grazing capacity.

The leased area may be reduced if it is determined that such area is required for the protection of sources of water supply to communities, or for camping places, stock driveways, roads and trails, or town sites, or for feeding grounds near communities for the use of domestic livestock or near the slaughtering or shipping points for use of stock to be marketed or for other public purposes; the authorized grazing use may be adjusted to conform to changes in grazing capacity estimates. In the case of any such reduction or adjustment, a proportionate adjustment will be made in the rental for the lease years commencing subsequent to the notice of such reduction or adjustment.

§ 4122.5–4 Temporary closing of leased area.

The State Director, in his discretion, may close temporarily to grazing, portions of the leased lands whenever, because of depletion of the vegetal cover due to drought, epidemic, fire, or any other cause, such action is necessary to restore the forage on the range to its normal condition. Such temporary closing will not operate to exclude such lands from the lease.

§ 4122.5–5 Crossing permits.

Upon application filed with the authorized officer by any person showing the necessity for crossing the Federal land with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

§ 4122.5–6 Trespass.

Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this Part or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts. (See § 9239.3–1 of this chapter for detailed trespass regulations.)

§ 4122.6 Cancellation.

Except as otherwise provided in § 4122.3–3, if the lessee shall fail to comply with any of the provisions of the regulations in this part or of the lease or of any cooperative agreement on a form approved by the Director entered into with the Bureau of Land Management for the benefit of the lease, and such default shall continue for 30 days after service of written notice thereof, or if the lease was issued improperly through error with respect to a material fact or facts, the lease may be terminated and cancelled by the authorized officer.

§ 4122.7 Pledge of leases as security for loans; applications for extension of lease by borrower-lessee.

(a) A lease may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may obtain from the authorized officer a written statement concerning the status of the grazing lease and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) An application by a borrower-lessee for an extension of the lease term should be executed and filed in triplicate on a form approved by the Director. When it appears that such extension will be in accordance with applicable law and not contrary to the public interest, the signing officer in his discretion may extend the lease for a period not to exceed 10 years from the date of the loan subject to such terms and conditions as are then provided by the regulations in this part, and by the signing officer.

(c) If the property of the lessee which was the basis for the granting of a preference right is acquired by the lending agency through foreclosure or otherwise, such agency or its occupants of the property or a purchaser of the property from the agency, if qualified, may apply on a form approved by the Director to be recognized as the new lessee. If, in selling the property, the lending agency takes back the mortgage on the property the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files in the office of the authorized officer notice that it has made a loan and has accepted a grazing lease as security therefor, in conformity with the provisions of this section, such agency will be advised of any adverse action taken affecting the lease, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the Bureau or any of its employees.

§ 4122.8 Appeals; filing.

An appeal from any decision rendered pursuant to §§ 4122.0 to 4122.8, inclusive, may be taken to the Director and the Secretary, in accordance with appeals and contests (Parts 1840 and 1850 of this chapter). The appeal should be filed with the officer who rendered the decision.

SUBCHAPTER I—TECHNICAL SERVICES (9000)

Group 9200—Protection

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

AUTHORITY: The provisions of this Part 9230 issued under R.S. 2478; 43 U.S.C. 1201.

§ 9239.3 Grazing.

§ 9239.3-1 Outside grazing districts.

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this subpart or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts.

(b) A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated shall be in default and shall be subject to the provisions of § 4122.6 of this chapter. In addition he may be subject to trespass action in accordance with the practices and procedures in §§ 9239.3-2(a), 9239.3-2(c) (1), (2), (3), (4), 9239.3-2(d), and 9239.3-2(g) of this chapter, modified so far as practicable and necessary to include Federal land outside of established grazing districts.

(c) When the alleged trespasser is not a lessee of lands under the regulations of this subpart the signing officer may take action against the trespasser in accordance with the practices and procedures in §§ 9239.3-2(a), 9239.3-2(c) (1), (2), (3), (4), 9239.3-2(d), and 9239.3-2(g) of this chapter modified so far as practicable and necessary to include lands subject to lease under the provisions of this subpart or within a stock driveway.

This Circular replaces and revokes Circulars 2145, 2163 and 2180.

Circular No. 2190

MARCH 3, 1849

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GRAZING REGULATIONS
for the
PUBLIC LANDS

U.S. DEPARTMENT OF THE INTERIOR

Stewart L. Udall, Secretary

BUREAU OF LAND MANAGEMENT

Charles H. Stoddard, Director

May 1965

Circular #2190

Title 43 Public Lands

Interior

Chapter II	Bureau of Land Management
Subchapter D	Range Management (4000)
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Circular No. 2145

GRAZING REGULATIONS for the PUBLIC LANDS

U.S. DEPARTMENT OF THE INTERIOR

Stewart L. Udall, Secretary

John A. Carver, Jr., Assistant Secretary,

Public Land Management

BUREAU OF LAND MANAGEMENT

Charles H. Stoddard, Director

May 1964

PREFACE

The regulations contained herein are applicable to the use, management, and protection of 178,000,000 acres of public land administered under the authority and provisions of the Taylor Grazing Act of June 28, 1934, as amended and supplemented.

Part 4100, Grazing Administration Inside Grazing Districts (The Federal Range Code for Grazing Districts), is applicable to the 159,000,000 acres of grazing land administered by the Bureau of Land Management's 58 grazing districts. It provides the necessary regulations pursuant to Section 3 of the Taylor Grazing Act for intensive management of the public lands.

Part 4120, Grazing Administration Outside Grazing Districts, provides regulations (pursuant to Section 15 of the Taylor Grazing Act) for the use and management of the 19,000,000 acres of leased lands that have not been included within grazing districts because of their scattered location pattern.

Subpart 9239, Trespass - Grazing, provides grazing trespass regulations, including disciplinary actions resulting from the commitment of acts prohibited and violation of the rules of fair range practice.

Subpart 1853, Hearings Procedures - Grazing, provides regulations, within districts, for the handling and processing of appeals.

These regulations now represent many modifications of the original regulations. Such amendments have been found necessary to meet more effectively the objectives of the Act by improving the orderly use of the land, preventing overgrazing and range depletion, and stabilizing the livestock industry dependent upon the public land.

The publication is a consolidation of the primary regulations used in the management of the public lands administered pursuant to the Taylor Grazing Act both inside and outside the statutory grazing districts and is intended to facilitate BLM operations.

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Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—RANGE MANAGEMENT (4000)

Group 4100—Grazing Administration

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

Subpart 4110—Grazing Administration (Inside Grazing Districts); General

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AUTHORITY: The provisions of this Part 4110 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 315a.

CITATION

Subpart 4110—Grazing Administration (Inside Grazing Districts); General

§ 4110.0-2 Objectives.

Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promtoe the highest use of the public lands within grazing districts which have been or hereafter are established, possession or control of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the Federal range will be required of all users.

§ 4110.0-3 Authority.

(a) *Saving clause.* So far as practicable and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in § 4110.0-2, the provisions of this Subpart 4110 will not be applied to the prejudice of the position of anyone who on the date of approval of this part was the holder of a grazing license or permit or who on that date had pending an application therefor.

§ 4110.0-5 Definitions.

Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management in or pursuant to the Federal Range Code for Grazing Districts (this part), unless the context otherwise requires:

(a) The "act" means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315, 315a–315r), as amended and supplemented.

(b) "The Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) The "Secretary" means the Secretary of the Interior or his authorized agent.

(d) The "Director" means the Director of the Bureau of Land Management or his authorized agent.

(e) "State Director" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(f) "Federal range" means land within established grazing districts administered by the Bureau of Land Management under the Federal Range Code for Grazing Districts (this part), including the vacant, unappropriated, and unreserved public land of the United States chiefly valuable for grazing and forage crops; State, county, and privately owned land leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land.

(g) "Property" means privately owned or controlled land or water used in range livestock operations.

(h) "Base property" means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(i) "Base property qualifications" means the maximum amount of grazing privileges on Federal range properly allowable to base properties in class 1 or class 2.

(j) "Forage land" means land the principal use of which is the production of natural or cultivated feed for livestock.

(k)(1) "Land dependent by use" means forage land other than Federal range of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the "priority period", was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years of such priority period in connection with substantially the same part of the public domain, now part of the Federal range. Such land may be (i) parallel land, i.e., land of the same character, interspersed with, and grazed at the same time as the Federal range on which grazing privileges may be granted, except in those grazing districts which by special rule have excluded parallel land as base property, (ii) land of different character than the Federal range and which properly supports the permitted livestock during

i - Parallel
ii - Different
iii Combination

all or part of the period that the Federal range is closed to grazing, or (iii) a combination of these two types of land. The priority period shall be the five-year period immediately preceding June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

Priority Period

(2) No land shall be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year after the date when the Federal range used in creating the dependency by use first became a part of a grazing district, except that if the Federal range used in creating the dependency by use became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date. Only the last set of base properties used during the priority period by a livestock operation can be invested with dependency by use by such operation.

(3) The extent to which grazing licenses or permits will be granted on the basis of dependency by use of land, shall be governed by the following:

(i) It shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of any two consecutive years or any three years in which use was actually made during the priority period, whichever is more favorable to the applicant, on that part of the public land which, at the time of the issuance of the license or permit, is Federal range.

(ii) It shall not exceed the amount of forage needed for the number of livestock creating such dependency by use that were customarily and properly sustained on the base property during the priority period and continue to use such property to the same extent, except that in no instance shall the use of base property be for less than the minimum period established under § 4111.2-1. The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that necessary for the proper support of the number of livestock used in creating the dependency by use (class 1) the base property, to the extent of such excess forage capacity, may be treated as dependent by location (class 2) if so qualified.

(iii) Whenever the dependency by use of two or more base properties was created by the use of all or part of the same Federal range, during the same or at different seasons of the year, by two or more livestock operations, the relative dependency by use of each of the base properties shall be proportionate to the average annual use actually and properly made of the Federal range during the priority period by each of the livestock operations.

(l) "Land dependent by location" means forage land other than Federal range, which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(m) "Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by the grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under § 4115.2-1(k)(2), the charge for one horse grazing on the Federal range for one month shall be at twice the rate charged for one cow grazing for the same period.

(n) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(o) "Full-time water" means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(p)(1) "Prior water" is water which, during all or not less than two years of the priority period was used to service certain public domain now part of the Federal range for a livestock operation that was established, permanent, and continuing, and which normally involved the grazing of livestock on the same areas of public land for a certain portion or portions of the years of such use. For the purpose of this definition the priority period shall be the five-year period immediately preceding June 28, 1934, except that in any area placed within a grazing district or added to an existing district by boundary modification after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) Where a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, have served to invest such water with the attribute of priority, but such livestock operation subsequently ceased using such water or waters and used other water or waters in such manner as to invest them, too, with priority, only the latter water or waters shall be considered as prior, unless the former are also prior because of use by another livestock operation.

(3) No water shall be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district except that when such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

(4) The extent to which grazing privileges will be granted on the basis of the priority of water shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of the years in which use was actually made during the priority period, on substantially that part of the public lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(q) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

(r) "Adjudication of grazing privileges" is the determination of the qualifications for grazing privileges of the base properties, land § 4110.0–5 (k)(1)) or water (§ 4110.0–5 (p)(1)) offered in support of applications for grazing licenses or permits in a range unit or area, and the subsequent equitable apportionment among the applicants of the forage production within the proper grazing season and capacity of the particular unit or area of Federal range, and acceptance by the applicants of the grazing privileges based upon the apportionment or its substantiation in a decision by an examiner, the Director, or the Secretary upon appeal. (Applicable provisions are Subpart 4111, and § 4115.2–3.)

Subpart 4111—Awards of Grazing Privileges

§ 4111.1 Qualifications of applicants.

§ 4111.1–1 Qualifications.

An applicant for a grazing license or permit is qualified if engaged in the livestock business and:

(a) Is a citizen of the United States, or

(b) Has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen or a valid petition for naturalization, or

(c) Is a group, association, or corporation authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, and the controlling interest in which is vested in persons who would be qualified as individual applicants under paragraphs (a) or (b) of this section.

§ 4111.1–2 Effect of transfer arising through operation of law.

The acquisition of rights in base property by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, based on such property, for a period of two years after such acquisition. Upon the failure of such person to qualify within the two year period the license or permit will be subject to cancellation in accordance with § 4115.2–1(d).

§ 4111.2 Base property qualifications and classification.

§ 4111.2–1 Minimum requirements; classification of base properties.

(a) The District Manager, after recommendation by the advisory board, shall establish minimum base property requirements as a condition of qualification for the issuance of a license or permit in each district or unit thereof, taking into consideration the availability of base properties for proper use with and their relative dependence upon Federal range, land and water conditions, and other factors affecting livestock operations in the area according to customary use and best practices for good range management.

(b) The District Manager after recommendation by the advisory board will classify base properties as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

§ 4111.3 Adjudication and apportionment of grazing privileges.

§ 4111.3–1 Mandatory requirements; rating and classification of Federal Range.

(a) *Grazing capacity; seasons and maximum annual period of use.* The District Manager, after recommendation by the advisory board, will rate the grazing capacity of each unit or area in a grazing district and will classify each for the proper seasons of use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range therein during any one year.

(b) *Wildlife; allowance for maintenance.* In each grazing district a sufficient grazing capacity of Federal range suitable for wildlife will be reserved by the District Manager after consulting with wildlife interests and the advisory board, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *Preference applicants.* Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in a livestock business, bona fide occupants or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner specified in paragraph (d) of this section. Provision will be made for other applicants so far as Federal range remains available.

(d) *Order of preference.* Licenses or permits will be issued in the following order:

(1) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(2) *Regular licenses and permits; number of livestock.* Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

§ 4111.3–2 Procedures.

(a) *Unit-wide or area-wide adjudication.* (1) The District Manager, after recommendation by the advisory board, may make a simultaneous classification under § 4111.2–2 of all offered base properties within a single administrative unit or grazing area and may allocate in a single action the available Federal range within the unit or area upon which such base properties are dependent.

(2) The District Manager shall give written notice by certified mail of such classification and allocation to the persons offering such base properties, naming a place and date not less than 30 days thereafter to file protest to the advisory board, in accordance with § 4115.2–1(b). Thereafter, and provided there is then pending a valid application for grazing privileges, the District Manager will render his final decision thereon and will allow the right of appeal to the examiner in accordance with § 4115.2–3.

(b) *Permits; annual licenses.* Grazing permits may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing; a recommendation thereon made by the advisory board, and approval thereof given by the District Manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. The practice of issuing an annual license will be continued until such time as a permit is issued. Upon the issuance of a permit any outstanding license or part thereof which has been granted on the same qualifications on which the permit is based will terminate. Upon expiration of a term permit an annual license may be issued, pending issuance of a new term permit.

(c) *Allotments.* Allotments of Federal range will be made to licensees or permittees when conditions warrant. Division of the range by agreement or former practice will be followed where practicable, provided such division is in substantial conformity with the qualifications for grazing privileges of the respective applicants and the agreement is reduced to writing and approved by the District Manager.

(d) *Administration of lands additionally available; preference right for lands restored from withdrawal.* (1) Any land within the exterior boundaries of a grazing district made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315M–1—315M–4), by the revocation of a withdrawal, or by the cancellation or relinquishment of a homestead entry or claim, or otherwise, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management.

(2) Where public lands are restored from withdrawal and the District Manager determines that the lands are available for grazing use, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to their restoration, shall have a superior preference to the further grazing use of such lands. The preference right must be asserted and an application for license or permit, on a form approved by the Director obtainable from the District Manager must be filed with that officer not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The District Manager may issue to such applicant an annual license or a term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act. 43 U.S.C., 1952 ed., sec. 315(h).)

§ 4111.4 Adjustments of grazing privileges.

§ 4111.4–1 Increase.

Increases in grazing capacity, when conditions warrant, and after recommendation of the advisory board and approval of the District Manager, will be apportioned in a manner that will assist in the stabilization of livestock operations controlling qualified base property, with emphasis being given to the restoration of reductions that have been imposed to reach the grazing capacity of a particular allotment or range area, and to allocation of increased grazing capacity to operators or interests whose efforts were responsible for such increases.

§ 4111.4–2 **Reduction.**

(a) If necessary to reach the grazing capacity of any area of the Federal range after licenses or permits have been issued, reductions of grazing privileges applicable to such area shall be made in the following order:

(1) Nonrenewable licenses.

(2) Regular licenses or permits to the extent, if any, to which they are in excess of the base property qualifications or having been otherwise improperly issued.

(3) Regular licenses or permits properly issued, on an equal percentage basis.

(b) Such reductions may be made either by reducing the number of livestock or the time on the Federal range involved, or by both methods, as determined by the District Manager after recommendation by the advisory board.

(c) When the District Manager, after recommendation by the advisory board, determines that the imposition of the full amount of certain reductions in grazing privileges from current licensed or permitted use necessary to reach the grazing capacity of a range area would impose a serious hardship on the range users, he is not required to impose the full amount of the reduction forthwith, but will then schedule a percentage of the required reduction during each of the three years immediately following the determination as the circumstances of each case may warrant, except when the total reduction is less than fifteen percent it may not be so scheduled but will be imposed forthwith in the full amount.

(d) The District Manager will notify each affected licensee or permittee by certified mail of his decision to make a reduction in grazing privileges to reach the grazing capacity of any Federal range area and of the manner in which the reduction is to be made. The District Manager's decision notice will allow thirty days from receipt thereof in which to file any desired appeal in accordance with § 4115.2–3. If no appeal is filed within the thirty-day period, the reduction will be made in accordance with the District Manager's decision, and no further appeal will be allowed even though the reduction may be scheduled under paragraph (c) of this section to cover a period of time up to three years. If any timely appeal is filed after receipt of the District Manager's decision notice, the reduction for the entire Federal range area under consideration will be deferred pending the completion of the appeal and hearing procedure. Any reduction provided by the ultimate decision will be applied to its full extent immediately after the effective date of that decision. If, however, the final decision on appeal is rendered within the three-year reduction period established by the decision notice of the District Manager, the required adjustment may be apportioned over the remaining portion of that period. In the event that the orderly administration of the range or other public interest so requires, any decision may be placed in full force and effect in accordance with the provisions of § 4115.2–3(i)(2).

(e) When the District Manager determines that the potential grazing capacity, with improvements, of a Federal range area is significantly greater than the present grazing capacity, he may, after obtaining advice from the advisory board, issue a current license for active use not to exceed the animal unit months of forage presently available, and issue a non-use license for the difference between the use allowable by the limits of the present grazing capacity and the potential. This difference will be held in a suspense status as reflected in the non-use portion of the license, provided that the aggregate of active and non-use privileges shall not exceed the extent of the base property qualifications of the licensee or permittee. Thereafter, when the District Manager determines that a significant portion of the potential grazing capacity has been attained, he may increase the active authorized use under the license or permit to that extent.

(f) Federal range lands to be used under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of a pending or proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with subpart 2412 of this chapter, and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Parts 1840 and 1850 of this chapter.

Subpart 4112—Management Practices

§ 4112.2 Designation of ranges for particular kinds of livestock.

The District Manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the Federal range.

§ 4112.3 General rules of the range.

§ 4112.3–1 Acts prohibited.

The following acts are prohibited on the Federal range:

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(b) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(c) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(d) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(e) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the District Manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(f) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(g) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

§ 4112.3–2 Rules of fair range practice.

All licensees and permittees shall comply with the following rules of fair range practice:

(a) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating to the branding of livestock and sanitary requirements shall be followed.

(b) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the District Manager.

(c) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the District Manager. Upon request by the majority of the users of any community allotment of Federal range, the District Manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

(d) When so requested by the State Director or District Manager, the licensee or permittee shall join with the Bureau of Land Management in preparing a fire plan which shall set forth in detail the program for prevention, control, and extinguishment of fires, including the responsibility of the licensee or permittee for action on his range allotment and on adjacent Federal range.

Subpart 4113—Supervision and Inspection

§ 4113.1 Procedure for enforcement of rules and regulations.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule. (Refer to § 9239.3-2 of this chapter for detailed enforcement procedures.)

Subpart 4114—Advisory Boards and Local Associations

§ 4114.1 Grazing district advisory boards.

§ 4114.1-1 Authorization for establishment; number of members; qualifications.

The State Director shall fix the number of members to be recommended by election for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be recommended by election, but shall be selected directly by the State Director. The State Director may fix the number of district advisers to be recommended by election as representatives of each class of stockman, according to the kind of livestock owned, or may fix the number to be recommended by election from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to recommend one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

§ 4114.1-2 Election, time and place; the general procedures.

All district advisers, except wildlife representatives, shall be recommended by election in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management, and published in the Federal Register. An election to recommend district advisers for appointments for each grazing district will be held within 90 days after the publication in the Federal Register of the order establishing the grazing district. Persons recommended by election for appointment at the first election after establishment of a grazing district, or at the first election during the 1964 calendar year, may be recommended for appointment and annual reappointment for a maximum period of three consecutive years; or the District Manager may divide the group, by lot, as evenly as possible into three groups to be considered as being recommended for appointment or reappointment for one year, two consecutive years, or three consecutive years respectively. Thereafter, elections will be held annually, for each group whose term of recommendation for appointment has expired, in accordance with the options set forth in the General Procedures for Grazing District Advisory Board Elections.

§ 4114.1-3 Appointment; term of office; removal; vacancies.

A person recommended by election for appointment as district adviser shall assume office only after he has been appointed by the State Director and has taken the oath of office. The State Director may, in his discretion, appoint those in group 1 for a period not to exceed 365 days; those in group 2 for an initial period of 365 days and thereafter a subsequent like period; and those in group three for an initial period of 365 days and thereafter two successive like periods. The State Director may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of the district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the District Manager, shall be transmitted to the State Director for consideration. A person selected to fill a vacancy shall be appointed for the remainder of the unexpired 365-day period, after which a person shall be recommended by election for the balance of the period of recommendation at the next regular election. The wildlife representative will be appointed by the State Director for a term of office that does not exceed 365 days.

§ 4114.1–4 Meetings; organization.

District advisory boards shall meet at any time and place within or near the district designated by the State Director or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licenses or permits or any other business.

§ 4114.1–5 Functions and duties of district advisers; limitations.

District advisers shall advise or make recommendations on the following matters:

(a) The qualifications, classification, and requirements of base property.

(b) The transfer and relinquishment of base property qualifications.

(c) The grazing capacity of the Federal range in the district.

(d) Applications for all types of grazing licenses or permits, including nonuse, or extension of use, except applications of district advisers.

(e) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(f) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of this part.

(g) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(h) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(i) Proper rules of fair range practice.

(j) Allotments of range by classes of livestock or for community or individual use.

(k) Seasonal use of the Federal range or any part thereof.

(l) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(m) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(n) Any recommendations made by local associations of stockmen in the district.

(o) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(p) Special rules for the district, within meaning of § 4115.2–4.

(q) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

§ 4114.2 State advisory boards.

§ 4114.2–1 Membership and meetings.

The livestock members of each grazing district advisory board shall select from their number at the first meeting of the board after each election, two members and two alternates to serve on a State advisory board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State will select one of their number and one alternate to serve as a wildlife member on the State advisory board. In addition, the State advisory board will have one or more additional members, but not exceeding seven, who will represent other interests such as forestry, minerals, soil conservation, outdoor recreation, urban and suburban development, county government, and State government. Such additional members and their alternates will be selected by the State Director from nominations made by State or local government officers or organizations reflecing nonlivestock interests in the management or disposition of public lands. The time and place for meetings of the

State advisory board shall be set by the State Director. The board shall select from its members one member to be chairman of the board. The co-chairman of the board shall be the State Director.

§ 4114.2–2 Functions and duties.

The State advisory boards shall consider and make recommendations on grazing, wildlife, forestry, outdoor recreation, minerals, soil conservation, urban and suburban development, and other resource administration policies or problems affecting the State as a whole. The operations of the State boards, including their meetings shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.3 National Advisory Board Council.

§ 4114.3–1 Membership and meetings.

The livestock members of each State advisory board shall select from their number, at its first meeting of each new term, one member and one alternate representing cattle and horses, and one member and one alternate representing sheep and goats, to serve on the National Advisory Board Council. The elected wildlife member or his alternate on each State advisory board will serve on the National Advisory Board Council representing wildlife interests. The State Director from each of the ten Western States with organized grazing districts shall submit a list of nominees, selected from the nonlivestock and nonwildlife membership on the State board. From this list, and other sources as he may determine, the Secretary of the Interior or his authorized representative shall appoint members, not exceeding ten in number, to the National Advisory Board Council to represent nonlivestock and nonwildlife interests. In addition to the above membership, one member from each of the States of Alaska and Washington will be appointed by the Secretary of the Interior or his authorized representative from a list submitted by the respective State Directors pursuant to nominations made by State or local government officers or organizations reflecting interests in grazing or other uses of public lands. The Council shall select from its members one member to be chairman of the Council. The co-chairman of the Council shall be an official of the Department of the Interior appointed by the Secretary of the Interior who shall set the time and place for such meetings of the National Advisory Board Council.

§ 4114.3–2 Functions and duties.

The National Advisory Board Council shall consider and make recommendations on policies and problems of a national scope related to all natural resource use and management. The operations of the National Council, including their meetings, shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.4 Local associations of stockmen.

§ 4114.4–1 Organization.

Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

§ 4114.4–2 Articles of incorporation; constitutions; by-laws.

Such associations shall be organized as corporations "not-for-profit", if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Director for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance which they are in conflict with the provisions of this part or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

§ 4114.4–3 Powers.

Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(a) To make contributions in cash,

property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(b) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district under permit issued by the Bureau.

(c) To act in an advisory capacity in the administration of the Federal range lying within the district.

(d) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes, contemplated by the act.

(e) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

§ 4114.4–4 Cooperative agreements for use of lands; obligation of licenses and permittees to share cost.

Whenever the grazing capacity of Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the District Manager after consideration of the recommendation of the association. The District Manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

Subpart 4115—Records and Administrative Procedures

§ 4115.2 Procedures.

§ 4115.2–1 License and permit procedures; requirements and conditions.

(a) *Filing and consideration of applications; interdistrict agreements; recommendations; service of notice.* (1) Each year a date will be set by the District Manager prior to which all applications for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) Applications for grazing licenses or permits will be considered first by the advisory board of the district in which the Federal range is located, except that applications of district advisers will be considered first by the District Manager, without reference to the advisory board.

(3) Where a grazing area or unit is located in one district, but is administered by the District Manager of an adjacent district pursuant to a formal interdistrict agreement, applications for grazing licenses or permits on such area or unit shall be filed with the District Manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the District Manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the District Manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable and the District Manager approves, he will notify the applicant by ordinary mail, which notice may be the fee billing. If the advisory board recommendation is favorable but the District Manager disagrees, notice will be served on the applicant in person or by certified mail sent to his address of record, setting forth the recommendation of the advisory board and the Manager's disapproval, together with the reason or reasons for a prospective adverse decision, including a reference to

the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a date, not less than ten days thereafter, on or before which oral or written protest may be presented to the District Manager. If the recommendation of the board is to any extent adverse, notice will be served on the applicant in person or by certified mail sent to his address of record, setting out the reason or reasons given by the advisory board for the adverse recommendation, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficent, and naming a place and date, not less than ten days thereafter, when protest against the recommendation will be heard. The District Manager may also serve notice on any other applicant or applicants who may be directly affected by the adoption of the advisory board recommendation or the prospective decision of the Manager which will allow an appropriate protest. In any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may recommend that a protest meeting not be held, whereupon the District Manager may accept the recommendation of the board as its final consideration.

(b) *Protests; reconsideration by advisory boards; service of notice.* At the time and place fixed for the protest meeting, any licensee, permittee, or applicant may appear, in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the District Manager. If such recommendation is favorable to the protestant, and the District Manager approves, he will notify the protestant thereof by ordinary mail, which notice may be the fee billing. If the recommendation is to any extent adverse, and the District Manager approves, a notice giving the reason or reasons therefor will be served on the protestant in person or by certified mail, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts that serve as controlling factors. Such notice will constitute the District Manager's final decision for purposes of appeal.

(c) *Allowance or rejection of application; modification; service of notice.* The District Manager, in the light of all facts and circumstances and after reference to the advisory board, may issue or refuse to issue a grazing license or permit. When the District Manager takes an adverse action on any application, a notice including a recital of the specific reasons for the action taken will be served on the applicant in person or by certified mail. The notice will advise the applicant of his privilege to appeal to an examiner.

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of §§ 4111.1, 4115.2–1(e), 4115.2–1(k)(4), 4114.4–4 or 4115.2–5(a)(6). Except as otherwise specifically provided, in any such case or in any case in which it shall appear that a license or permit confers grazing privileges in excess of those properly allowable under this part, the District Manager will notify the licensee or permittee that the license or permit is thereby held for cancellation or reduction either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such action should not be made final. Such notice will set forth fully the reasons for the proposed action, specifically referring to the pertinent provisions of this part, and will be served on the licensee or permittee by certified mail or in person. In case of failure of the licensee or permittee to show cause within the time allowed, the license or permit will be canceled or reduced to the extent indicated in the notice. The District Manager will consider any cause shown and, if satisfied of its sufficiency, will close the case; if not satisfied as to its sufficiency, or if no cause is shown, he will notify the licensee or permittee in person or by certified mail that the cancellation or reduction will become final unless an appeal to the examiner is filed in accordance with § 4115.2–3(a).

(e) *Terms and conditions.* The issuance and continued effectiveness of all regular licenses and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation.

(2) No license or permit will provide for the grazing livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the grazing capacity of the Federal range to be used, as determined by the District Manager, except as may be allowed under § 4111.4-2 (c) and (e).

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(6) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately to the reduction in available grazing capacity caused by the loss of such Federal range.

(7) If a licensee or permittee for two consecutive years ceases to make substantial use of his base property in connection with his year-round livestock operation, the authorized use under such license or permit and the qualifications of the base property may be subject to reduction in proportion to the diminished use of the base property.

(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the District Manager; except that, if the licensee or permittee notifies the District Manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the District Manager shall determine; or

(ii) All or part of such other lands or grazing privileges as are necessary to his year-round operation, the license or permit will be subject to reduction in proportion to the loss of such necessary lands or grazing privileges unless the licensee or permittee notifies the District Manager within 30 days after such loss and thereafter within the time allowed by the District Manager after recommendation by the advisory board acquires ownership or control of other lands or grazing privileges sufficient to assure a year-round operation.

(9) Base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To include in an application for a license or permit or renewal thereof, the entire base property qualifications for active, nonuse, or combination of active and nonuse, except where the base property qualifications are included in an outstanding current term permit, or where the allowable use has been reduced under § 4111.4-2 (a) (3), (c), and (e).

(ii) To accept a license or permit issued pursuant to such application.

(10) The failure for any two consecutive years to make substantial use as determined by the District Manager, after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit, may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Nonuse, in whole or in part, of grazing privileges under a license or permit may be authorized by the District Manager, upon application by the licensee or permittee, after reference to the advisory board, for the following reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit in whole or in part may result in a proportionate loss of the base property qualifications supporting such license or permit.

(13) (i) No readjudication of any license or permit, including free use li-

cense, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

(ii) The Bureau of Land Management may make adjustments in licenses and permits at any time when necessary to comply with the Federal Range Code for Grazing Districts.

(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the District Manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s), as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the District Manager.

(iii) May take necessary action to enforce the requirements under subdivisions (i) and (ii) of this subparagraph, in accordance with the provisions of paragraph (d) of this section.

(f) *Interest of Member of Congress prohibited.* No Member of or Delegate to Congress shall be admitted to any share or part of any license or permit issued under the act, or to derive any benefit to arise therefrom. (41 U.S.C. sec. 22; 18 U.S.C. secs. 431–433.)

(g) *Change in grazing seasons.* Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license or permit may, upon written approval of the District Manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(1) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(2) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(3) Such use will not be detrimental to the Federal range, and

(4) Such use will not adversely affect other licensees or permittees.

(h) *Exchange of use licenses.* Exchange of use licenses may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land, without payment of grazing fees, provided that during the term of the license the Bureau shall have the management and control of such non-Federal land for grazing purposes.

(i) *Nonrenewable licenses.* Nonrenewable licenses may be issued to nonpreference applicants only for the period specified by the District Manager and for the number of livestock for which range is temporarily available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

(j) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U.S.C. App. 511(1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the District Manager an application, in duplicate, setting forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the District Manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner termi-

nated upon further application to the District Manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for not to exceed the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, or otherwise, such temporary license shall terminate as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the District Manager on an application for suspension of a license or permit under this paragraph may be appealed by the licensee or permittee to the Director, and from the Director to the Secretary of the Interior, in accordance with the rules of practice, Part 1850 of this chapter.

(k) *Fees for grazing licenses and permits*—(1) *Free-use licenses.* No fee will be charged for the issuance of a free-use license.

(2) *Licenses and permits; rates.* (i) Each regular licensee or permittee, and holder of a nonrenewable license will be charged fees, consisting of a grazing fee for use of the range and a range improvement fee, for the animal unit months authorized by the license or permit, at a rate per animal unit month. All billing shall be issued in accordance with the rates prescribed in subdivision (ii) of this subparagraph. All livestock 6 months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No fees will be charged for livestock under 6 months of age. Range improvement fees may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any State or Federal agency, or any person, association, or corporation. A minimum annual charge of $10 will be made on all regular licenses or permits, and nonrenewable licenses.

(ii) (*a*) The fee or fees for any fee year, beginning on March 1, will be established by the Secretary at a rate which is equivalent to a specified percentage, to be fixed by the Secretary, of the average of the prices per pound of beef and lamb, rounded to the nearest whole cent, which was paid to growers during the preceding calendar year in the markets of the 11 Western States, as determined by the Secretary based upon market prices as reported by the Department of Agriculture.

(*b*) The fee for any fee year may be changed by the Secretary from that of the preceding year by fixing a new specified percentage of the average of the prices per pound of beef and lamb. The fee for any fee year shall, in any event, be adjusted by the Secretary, in addition to any percentage adjustment that may be made, to conform to changes in market price conditions whenever in the preceding calendar year there is a change in the average of such prices, rounded off to the nearest whole cent, of 2 cents or more above or below the corresponding average for the preceding year.

(*c*) The fee or fees established by the Secretary for any fee year, including announcement of the portion thereof to be credited to the range improvement fund, will be published as a notice in the FEDERAL REGISTER. All regular billings shall be issued in accordance with the rate or rates prescribed in the notice.

(3) *Crossing permits.* Upon application filed with the District Manager by any person showing the necessity for

crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $5 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

(4) *Payment of fees; reduction or increase in numbers; modification of periods of use.* No license or permit shall be issued or renewed until payment of all fees due the United States under the Federal Range Code for Grazing Districts has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice and are payable in advance of the first grazing period and for the full amount indicated on the fee notice; no license or permit shall be effective to authorize grazing use thereunder until such advance payment has been made. A permit may be canceled or reduced pursuant to paragraph (d) of this section for failure to pay the fee in accordance with the fee notice. Any licensee or permittee who desires to make temporary use of the grazing privileges during any authorized grazing period or periods in a manner other than that authorized in his existing license or permit must file with the district manager a written request for such change in use at least 10 days prior to the beginning of any such grazing period. If the district manager approves the request he will issue an adjusted fee notice accordingly.

(5) *Refunds.* No refund of fees properly paid will be made because of an unauthorized failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(i) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Director may in his discretion credit, remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period so long as the emergency exists.

(ii) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be filed with the District Manager under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U.S.C. 95, et seq.), or such excess fees may be credited on subsequent fee notices.

§ 4115.2–2 Transfers and relinquishments.

(a) *Transfer of base property; effect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if qualified under § 4111.1–1, to so much of the grazing privileges as are based thereon. Except as otherwise herein provided, the existing license or permit and the grazing privileges thereunder shall automatically and without further notice be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property; except that further grazing under the license or permit may be temporarily extended pursuant to request and notification filed in accordance with § 4115.2–1(e)(8)(i); except, also, where the transfer arises as a result of testamentary disposition the existing license or permit may continue in effect until the end of the current grazing season. Thereafter applications for renewal of a license or permit shall be filed by the heirs, devisees, executor, administrator, or personal representative, as the case may be.

(2) A transferee shall, within 90 days from the date of transfer, file with the District Manager documentary evidence of the transfer and an application on a form approved by the Director for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred. Where, however, a transfer, or a different vesting in any manner, of a leasehold interest in land or water may result in interference with the stability of livestock operations or with proper range management, upon a finding to that effect by the District Manager, after reference to the advisory board, such land or water will lose its base property qualifications and grazing privileges based thereon will be denied.

(b) *Transfer of base property qualifications; limitations; consent of owner or encumbrancer; effect.* (1) A licensee or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 4111.1–1. An application for approval of a transfer shall be filed with the District Manager on a form approved by the Director for land base or water base.

(2) Transfer of base property qualifications may be made under the following conditions:

(i) When an applicant owns or controls base land or lands having a forage production in excess of that required to support the licensed or permitted livestock, the qualifications may be concentrated on that part of the property having the forage production required by and which will continue to be used for the support of such livestock.

(ii) When such qualifications are to be transferred from land owned or controlled by the applicant, to land owned or controlled by others, the transfer will be recognized only to the extent such qualifications do not exceed the forage production of the new base property.

(iii) When an applicant owns or controls base water, the qualifications may be transferred to another adequate water source which will service the same range area.

(3) No transfer will be allowed under this paragraph if it interferes with the stability of livestock operations or proper range management, or adversely affects the local economy. No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made, except that in an application for transfer of class 1 qualifications where the applicant for such transfer is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such consent will not be required. Upon approval of the application by the District Manager after reference to the advisory board, the transfer shall be effective as of the date of filing of the application, and the base property from which the transfer is made will thereupon lose its qualifications to the extent indicated in the transfer.

(c) *Relinquishment of base property qualifications; limitation; effect.* Upon request, the district manager may accept a written relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified: *Provided,* That no such relinquishment will be accepted without the written consent of the owner or owners, if other than the applicant, and any encumbrancer of the base property, except that if the applicant is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

§ 4115.2–3 Appeals and hearings.

Any applicant whose interest is adversely affected by a final decision of the District Manager may appeal to an Examiner in accordance with § 1853.1 of this chapter. The conduct of hearings are provided for in §§ 1853.2 through 1853.6 of this chapter. Appeals to the Director will be pursuant to § 1853.7 of this chapter supplemented by Part 1840 of this chapter. An appeal from a decision of the Director may be made to the Secretary of the Interior in accordance with Part 1840 of this chapter (see § 1853.7(c) of this chapter).

§ 4115.2–4 Special rules for grazing districts.

Whenever it appears to a State Director after considering the recommendation of the district advisory board that local conditions in any district make necessary the adoption of a special rule on any of the matters in this part in order better to achieve an administration consistent with the purposes of the act, he may, recommend such a rule, supported by a factual showing of its necessity, for the approval of the Director. Such rule, if approved, shall be published in the FEDERAL REGISTER.

§ 4115.2–5 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the Federal range.* (1) *Qualification of applicants for per-*

mits. An applicant for a permit to construct or maintain improvements under section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must be qualified under § 4111.1–1.

(2) *Applications.* Applications for such permits shall be filed in triplicate with the District Manager on a form approved by the Director.

(3) *Appeals.* The District Manager will act on the application after reference to the advisory board and such action shall be final unless the applicant or any interested party appeals in accordance with § 4115.2–3.

(4) *Assignments.* Assignments of section 4 permits shall be filed with the District Manager in triplicate on the authorized form and shall not be effective until approved by the District Manager.

(5) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* Where an application shows that the applicant and the prior occupant have not agreed on the value of such improvements owned by the latter, the District Manager will promptly, at the applicant's expense, cause the prior occupant to be served either personally or by certified mail with a notice of the filing of the application, and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or if the prior occupant applies within thirty days from the date of service for an appearance before the District Manager, then in the light of such evidence as the applicant and the prior occupant may present in such appearance, the District Manager will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken in accordance with § 4115.2–3. Upon the failure of the prior occupant to show cause or to apply within thirty days for an appearance, the reasonable value of the improvements will be determined by the District Manager but shall be not less than the amount alleged by the applicant in his application, and the decision of the District Manager in such case shall be final. In any case when a decision has become final, payment by the applicant of the amount determined and a showing that the improvements are free of all encumbrances may be required prior to favorable action on the application for use of such improvements, and on any application for grazing privileges involving the use of such improvements.

(6) *Cooperative agreements.* A licensee or permittee may enter into a cooperative agreement with the District Manager for the construction and maintenance of range improvements on the Federal range. Failure of the licensee or permittee to comply with the terms of such an agreement within a reasonable time as allowed by the District Manager may result in cancellation of the license or permit as provided in § 4115.2–1(d).

(7) *Applications for lands containing range improvements; compensation; reservation.* Public lands embraced in a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, or other public land laws, as specified in § 4111.4.

(i) When the disposal application covers land upon which range improvements have been placed pursuant to a permit authorized under section 4 of the act, the owner thereof may be required to remove the improvements; or if the improvements are of a permanent nature, the land applicant may be required to agree in writing to compensate the licensee, permittee, or other owner of such improvements located on the lands applied for an amount to be mutually agreed upon, or, if the parties are unable to agree, then in the amount and within the time for payment as determined by the District Manager in accordance with the applicable procedure under subparagraph (5) of this paragraph.

(ii) (*a*) When the disposal application covers public land upon which range improvements have been placed by the United States, or pursuant to a cooperative agreement heretofore or hereafter entered into between the Bureau and the licensee, permittee, and/or other cooperators, the disposal application will be referred by the land office manager to the District Manager for determination as to whether it may be allowed, notwithstanding such improvements, and, if so, whether with or without a reservation. If the application is to be allowed without a reservation of the improvements, the applicant may be required to agree in writing to compensate for the loss of such improvements in the amounts to be mutually agreed upon and payable separately to the Bureau and to the cooperators. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. In the event of disagreement, the District Manager shall determine the total amount of compensation due, as provided in subparagraph (5) of this paragraph, and the time for payment. Such amount shall then be payable separately to the Bureau and to the cooperators entitled thereto, in proportion to the amount or value of their respective contributions in money, material, or labor, to the total cost of the improvement, as made by them under the original cooperative agreement as specified by the District Manager.

(*b*) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the District Manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Director and to the Secretary, in accordance with the rules of practice (Part 1840 of this chapter).

(iii) Under the act of July 9, 1942, as amended (43 U.S.C. sec. 315q), the holder of a grazing license or permit shall be compensated for the losses sustained by reason of cancellation of or prevention of use of authorized grazing privileges resulting from the use of lands embraced in such license or permit for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the Federal department or agency making such use. Such payment shall be deemed payment in full for such losses.

(b) *Contributions for administration, protection, and improvement of public lands.* The District Manager may accept contributions under section 9 of the act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction in the States.

(1) Any individual, association, corporation, grazing district advisory board, State or local body or private group, may enter into an agreement with the District Manager with respect to such contribution. Where the contribution is to include money, the contributor should execute the appropriate form as requested by the District Manager.

(2) Contributions may be conditioned upon their use for specific projects or in specific localities.

(3) The District Manager may authorize refund of any amounts deposited in excess of the contributor's proper share of the expense incident to the purpose for which the contribution was made.

§ 4115.2–6 Pledge of licenses and permits as security loans.

(a) A license or permit may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the licensee's or permittee's livestock operations. Before making a loan, a lending agency may obtain from the District Manager a written statement concerning the status of the grazing license or permit and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) A borrower-permittee desiring an extension of the term of his permit may file a request therefor, in writing, with the District Manager, setting forth the name of the lending agency, purpose and amount of loan, and the need for the extension of the permit term. When it appears that such extension will be in accordance with applicable law and regulation and not contrary to the public interest, the District Manager, in his discretion, may extend the permit for a period not to exceed 10 years from the date of the loan, subject to the rules and regulations then in force and to such additional terms and conditions as the District Manager may provide. The provisions of this paragraph shall not be applicable to grazing licenses which are issued annually on a temporary basis prior to the issuance of term permits.

(c) If the base property to which the grazing privileges on the Federal range covered by the pledged license or permit are attached as a grazing unit is acquired by the lending agency through foreclosure or otherwise, such agency, or purchasers, lessees, or occupants of the property authorized by such agency, if qualified, may apply to be recognized as the successor licensee, or permittee. If in selling the property the lending agency takes back a mortgage on the base property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files with the District Manager notice that it has made a loan and has accepted a grazing license or permit as security therefor in conformity with the provisions of this section, the District Manager as a matter of cooperation will keep such agency advised of any adverse action affecting the license or permit, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the District Manager or the Bureau or any of its employees.

SUBCHAPTER I—TECHNICAL SERVICES (9000)

Group 9200—Protection

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

AUTHORITY: The provisions of this Part 9230 issued under R.S. 2478; 43 U.S.C. 1201.

§ 9239.3 Grazing.

§ 9239.3–2 Inside grazing districts.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule.

(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the range manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the range manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of this part or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the range manager he will close the case; if satisfactory showing is not made within the time allowed, the violations alleged in the notice will be deemed to have been willful and the range manager will notify the State Director thereof for further action under paragraph (e) of this section.

(b) *Violations clearly wilful; special circumstances.* Whenever it appears to the district manager that a violation is clearly wilful, grossly negligent, or repeated, or when the public health, safety, or interest requires, or when disciplinary action is advisable, the district manager will refer the matter directly to the State Director for further action under paragraph (c) or (e) of this section, whichever is appropriate.

(c) *Unlawful grazing on the Federal range; determination of damages; removal of livestock; impoundment.* (1) Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice on his lien with the range manager will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(2) Where the owner of the trespassing livestock, or his representative, is known, the district manager shall make a determination of the damage to the Federal range and other property of the United States and shall make a demand for payment upon the alleged violator, setting forth the foregoing values including the value of the forage consumed. Where the trespass grazing is not deemed to be clearly wilful the forage value shall be computed at the rate of $2 per animal unit month, or at the commercial rate if such rate is the higher; if the district manager deems the trespass grazing to be clearly wilful, grossly negligent, or repeated he shall compute the forage value at $4 per animal unit month, or at twice the commercial rate if such amount is the higher.

(3) In any case where neither the owner of the trespassing livestock, or his representative, is known, or where conservation of the Federal range and of the forage thereon requires it, the district manager, when so authorized by written order of the State Director, may take steps to remove the trespassing livestock by such methods and by such means not inconsistent with legislation which pro-

hibits the use of airborne or motor-driven vehicles in the gathering of horses or burros, as may be necessary, and to dispose of them by sale or otherwise within not less than five (5) days after public notice of his intention to make such disposition, subject to the right of any owner or registered lienholder of such trespassing livestock to redeem the livestock within such nondisposal period upon payment of:

(i) The damage to the Federal range and other property of the United States.

(ii) The cost of such impoundment and removal.

(iii) The value of any forage consumed as determined in accordance with subparagraph (2) of this paragraph.

(4) If the amounts found to be due the United States in accordance with subparagraph (3), subdivisions (i), (ii), and (iii) of this paragraph are contested by the owner of the livestock, his representative, or lienholder, the trespassing livestock may be redeemed by the posting of a cash or corporate surety bond in lieu of immediate payment. Such bond will be adequate to insure full satisfaction of the claims made. A hearing will then be scheduled before an examiner of the Bureau of Land Management. The hearing will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence will be confined to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass. The examiner will render a written decision assessing the amounts due.

(5) Where conservation of the Federal range and the forage thereon requires it, the State Director may temporarily close a grazing district or any portion thereof, to grazing by any class of livestock to be specified in such order. Notice of the order shall be published in a local newspaper and shall be posted at the County Courthouse of the County in which the closed area lies. The order shall require all owners of livestock affected thereby, to remove such livestock from the area within not less than five days from date of publication of the notice. Thereafter the range manager shall proceed to impound, remove, and dispose of, in the most humane manner in accordance with the provisions of this paragraph any such livestock trespassing or grazing in violation of the closing order.

(d) *Amicable settlement of civil cases involving unauthorized use of the Federal range or damage to Federal property.* Offers of settlement for the value of the forage consumed in trespass as determined in accordance with paragraph (c) (2) of this section and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provisions of the act or of the Federal Range Code for Grazing Districts in the amount of $2,000 or less may be accepted by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for the consumed forage and damage involved until finally accepted by the district manager or the State Director. Satisfaction of civil liability tdoes not relieve the alleged violator of any criminal liability under Federal law. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Director that disciplinary action is advisable because of a wilful, grossly negligent, or repeated violation, he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit and the section or sections of the Federal Range Code for Grazing Districts, or of the Act alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the value of the forage consumed, as determined in accordance with paragraph (c)(2) of this section. The notice will cite the license or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license, permit, or base property qualifications should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

(2) The hearing upon the order to show cause will be conducted so far as

practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, including the value of any forage consumed, due the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages, including the value of any forage consumed, as determined in accordance with paragraph (c)(2) of this section, and directing the district manager to suspend, reduce, or revoke the license, permit, or base property qualifications or to deny renewal, if the facts so warrant.

(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a willful or wanton violation of any provision of this part or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the range manager may refuse to issue or renew a license or permit, or the State Director may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of this subpart or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary of any matter under § 9239.3–2 shall be made in accordance with the applicable provisions of § 4122.2–5 of this chapter and Appeals and Contests Parts 1840 and 1850 of this chapter.

SUBCHAPTER A—GENERAL MANAGEMENT
(1000)

Group 1800—Public Administrative Procedures

PART 1850—HEARINGS PROCEDURES

(Note: Subpart 1853 consists of special hearings procedures for "Inside Grazing Districts")

Subpart 1853—Grazing Proceedings

1853.1 Appeal to hearing examiner; motion to dismiss.
1853.2 Time and place of hearing; notice; intervenors.
1853.3 Authority of examiner.
1853.4 Service.
1853.5 Conduct of hearing.
1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.
1853.7 Appeals to the Director and the Secretary.
1853.8 Effect of decision suspended during appeal.
1853.9 Conditions of decision action.

Subpart—1853 Grazing Proceedings

AUTHORITY: The provisions of this Subpart 1853 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 315a.

§ 1853.1 Appeal to hearing examiner; motion to dismiss.

(a) Any applicant whose interest is adversely affected by a final decision of the district manager may appeal to an examiner by filing his appeal in the office of the district manager within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the decision of the district manager is in error. All grounds of error not stated will be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the examiner.

(b) Any applicant for a grazing license or permit or any other person who, after proper notification, fails to protest or appeal a decision of the district manager within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in such final decision.

(c) When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(d) The district manager will promptly forward the appeal to the State Director. Within thirty days after his receipt of the appeal the State Director may file on behalf of the district manager a written motion, serving a copy thereof upon the appellant, requesting that the appeal be dismissed for the reason that it is frivolous, the appeal was filed late, the errors are not clearly and concisely stated, the issues are immaterial, the issue or issues were included in a prior final decision from which no timely appeal was made, or all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The appellant may file a written answer within twenty days after service of the motion upon him. The appeal, motion, the proofs of service, and the answers will be transmitted to the examiner, who shall rule on the motion, and, if the motion is sustained, dismiss the appeal by written order.

§ 1853.2 Time and place of hearing; notice; intervenors.

At least thirty days before the date set the district manager will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the district manager may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the examiner as an intervenor in the appeal.

§ 1853.3 Authority of examiner.

(a) The examiner is vested with the duty and general authority to conduct the hearing in an orderly, impartial and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a decision. The examiner shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by § 1850.0–7, to the extent such regulation is applicable.

(b) The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with § 1852.3–3, and when the ends of justice will be served thereby. Continuances will not be granted unless they are clearly justified and timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the district manager and on other parties. The district manager and other parties shall have five days from receipt of the request to file objection to the continuance. The examiner will then rule on the request, and, if granted, set a new date for the hearing. The district manager will notify all interested persons of the new date.

§ 1853.4 Service.

Service of notice or other documents required under this subpart shall be governed by § 1850.0–6(e). Proof of such service shall be filed in the same office where the notice or document was filed within fifteeen days after such service, unless filed with the notice or document.

§ 1853.5 Conduct of hearing.

(a) The appellant, the State director or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented. Issues which appear to the examiner to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the State director or his representative, unless the examiner rules that such issue is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties.

(b) Unless the examiner orders otherwise, the State director or his representative will then make the opening statement, setting forth the facts leading to the appeal (or issuance of the show cause order where that is involved). Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the examiner, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under this subpart as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the examiner.

(c) In the absence or upon denial of such motion the State Director or his representative and recognized intervenors may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every ruling of the examiner will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the opposing party may then make an offer of proof in rebuttal. The examiner will summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

§ 1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.

(a) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law unless waiver has been stipulated, and will render a decision upon all material issues of fact and law presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any further appeal. A copy of the decision shall be sent by certified mail to the appellant and all intervenors, or their attorneys of record.

(b) The Director may require, in any designated case, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by Subpart 1844.

§ 1853.7 Appeals to the Director and the Secretary.

(a) *Notice of appeal to the Director; furnishing copies of the transcript.* Within ten days after the receipt of the decision of the examiner any party, including the State director or his representative, desiring to appeal to the Director shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the State director without charge, and to other appellants and to the intervenors, at a charge of ten cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervenor is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed through the office of the Hearing Examiner.

(b) *Appeals to the Director.* An appeal from any decision of the examiner shall be filed in the Office of the Director, Bureau of Land Management, Department of the Interior, Washington, D.C., 20240, together with any brief in support thereof, within thirty days after date of receipt of the transcript of testimony, or, if the transcript is not requested, within thirty days after receipt of the examiner's decision. Within the same period a copy of the appeal and of any brief must be served on each party named in the examiner's decision, and upon the State Director, either personally or by certified mail. Any party, including the State Director, opposing the appeal will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in the Office of the Director a reply brief, a copy of which must be served on the appellant(s) in the same manner and the same period. The appeal in other respects shall be made in accordance with Part 1840, except that no filing fee is required.

(c) *Appeals to the Secretary of the Interior.* An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with Subpart 1844.

§ 1853.8 Effect of decision suspended during appeal.

(a) An appeal shall suspend the effect of the decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing privileges to be granted under the current application, an appellant who was granted grazing privileges in the preceding year may continue to use such privileges pending final action on the appeal, unless the decision appealed from is made immediately effective, as herein next provided.

(b) When the orderly administration of the range or other public interest so requires, (1) the district manager may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (2) the examiner or the Director may provide in the decision on an appeal before such officer, that it shall be in full force and effect pending decision on any further appeal; (3) the Director or the Secretary may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the district manager pursuant to a decision shall be subject to modification or revocation by the Examiner, Director, or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under section 10(c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

§ 1853.9 Conditions of decision action.

(a) *Record as Basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the State Director and as supported by and in accordance with the reliable, probative and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

(b) *Effect of substantial compliance.* No adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4110 of this chapter.

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS)

Subpart 4122—Grazing Leases (Sec. 15—Taylor Grazing Act)

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AUTHORITY: The provisions of this Part 4120 issued under sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

Subpart 4122—Grazing Leases (Sec. 15—Taylor Grazing Act)

§ 4122.0–3 Authority.

Section 15 of the act of June 28, 1934 (48 Stat. 1275), as amended, authorizes the Secretary of the Interior to lease for grazing purposes vacant, unappropriated, and unreserved public lands outside of established grazing districts in the continental United States only.

§ 4122.0–5 Definitions.

(a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "State Director" means the proper State Director, Bureau of Land Management.

(d) "Manager" means manager of the proper land office. Where there is no land office, it means the Director, Bureau of Land Management.

(e) "Signing officer" means the Government official who has been duly authorized to issue a grazing lease.

(f) "Field office" means any office of the Bureau of Land Management, including the land office, near the lands applied for and in the State in which such lands are situated. If there is no land office or other field office in the State, it means the office of the Director, Bureau of Land Management, Washington 25, D.C.

(g) "The act" means the act of June 28, 1934 (48 Stat. 1269), as amended.

§ 4122.1 Conditions.

§ 4122.1–1 Qualifications of applicants.

An applicant for a grazing lease is qualified if the applicant

(a) Is a citizen of the United States, or

(b) Has filed a declaration of intention to become a citizen: *Provided*, That an applicant who has filed such declaration but has not filed a petition for naturalization before a court of competent jurisdiction within seven years from the date of filing the declaration or, having filed such petition, has failed to attain citizenship within a reasonable time thereafter and is unable to show any satisfactory reason for such failure, shall be disqualified to receive a grazing lease or any renewal of an existing lease until he has actually attained citizenship, or

(c) Is a group, association, or corporation which is authorized to conduct business under the laws of the State in which the lands applied for are located and the controlling interest in which is vested in a citizen or citizens or persons who would be qualified as individual applicants under paragraphs (a) and (b) of this section.

§ 4122.1–2 Classes of applicants; preference rights.

The act, as amended, provides for the issuance of grazing leases to classes of applicants in the following order:

(a) Preference-right leases to applicants who are the owners, homesteaders, lessees, or other lawful occupants of lands contiguous to or cornering on an isolated or disconnected tract embracing 760 acres or less for the whole of such tract, upon the terms and conditions prescribed by the Secretary, provided the preference-right is asserted during a period of 90 days after such tract is offered for leases.[1]

(b) Preference-right leases to applicants who are owners, homesteaders, lessees, or other lawful occupants of contiguous lands to the extent necessary to permit the proper use of such contiguous lands.

(c) Leases where no preference-right applicant is involved.

§ 4122.2 Application for lease.

§ 4122.2–1 Applications.

An application for lease shall be executed in triplicate on a form approved by the Director and filed in triplicate in any field office of the Bureau of Land Management in the state in which the lands applied for are situated.

§ 4122.2–2 Filing fee.

A filing fee of $10 will be charged for each grazing lease application, including an application arising out of the assignment of leased lands, when it embraces in whole or in part lands which are not already under lease by the applicant or by the assignor on the date of filing such application.

§ 4122.2–3 No right conferred by application prior to lease.

The filing of an application will not segregate the land applied for from application by other persons for a grazing lease or from other disposition under the public land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for pending the issuance of a lease. Any such unauthorized use constitutes a trespass.

§ 4122.2–4 Action on defective application or where the lands applied for are not subject to grazing leasing.

Upon the filing of any application, the officer receiving it may require any defects in the application to be cured or additional information to be provided. The signing officer may reject any application if the applicant fails to cure defects in the application within the time allowed, which period shall not be less than thirty days from the date of receipt of notice of such defects by the applicant. If the application must be rejected because of the status of the land for which application is made as where land is in an allowed entry, otherwise appropriated or reserved and not subject to lease under the act, or not public land, a manager, if his office has land status, or a signing officer shall reject the application.

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[1] Where the lands applied for include the even-numbered sections within the limits of a railroad grant, even though in the aggregate such lands exceed 760 acres, each such section will be considered as an isolated or disconnected tract within the meaning of this provision. The difference between the higher preference right accorded under this paragraph and the preference accorded under paragraph (b) of this section is that the applicant is not required to demonstrate that the public lands are necessary for the proper use of the contiguous or cornering lands, except where there are conflicting applications of the same class of applicants.

By Departmental Notice of July 31, 1937, all vacant, unreserved and unappropriated public lands, exclusive of Alaska, not included in an established grazing district, were then offered for lease under section 15; all lands not then subject to lease under section 15 because of their appropriation or reservation, were offered for lease as of the date any such lands first became subject to lease.

§ 4122.2–5 Conflicting applications.

In those cases where more than one applicant applies for the same land and where it appears that a division of the lands should be made, such conflicting applicants will be given an opportunity to agree to a division of the lands prior to a determination by the signing officer as to the disposition of such conflicting applications or division of the lands. After a division of the range has been made either by agreement between applicants which is acceptable to the signing officer or by determination of the signing officer where there is no acceptable agreement, any conflicting applications or protests filed subsequent thereto will be rejected.

§ 4122.2–6 Protests.

Protests against the approval of an application for a lease should be filed in the same manner and number of copies as applications for a grazing lease, contain a complete disclosure of all facts upon which the protest is based, and describe the lands involved in such protests and should be accompanied by evidence of service of a copy of the protest on the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protest is filed, the protest should also be accompanied by an application for a grazing lease.

§ 4122.3 Leases.

§ 4122.3–1 Issuance of leases.

(a) *Conditions.* The lease will be executed by the signing officer and transmitted to the lessee only after final action is taken on any protests or timely appeals which may have been filed. The applicant's signature to the application shall be considered to be his signature to and his acceptance of the lease when executed by the signing officer, without prejudice to the applicant's right to appeal from the disallowance of his application as to any part of the lands applied for or from the issuance of a lease for a shorter term than that applied for.

(b) *Term.* A lease may be issued for a period of not more than 10 years. Renewals may be for periods of not more than 10 years, upon such terms and conditions as may then be prescribed.

(c) *Application for renewals.* An application for renewal of lease should be executed and filed in triplicate on a form approved by the Director at least 90 days prior to the expiration of the lease. The application may also include a request for the consolidation of other outstanding grazing leases held by the lessee. Such application does not confer on the lessee any preference right to a renewal but will, however, authorize the exclusive grazing use of the lands by the lessee in accordance with the provisions of the lease pending final action on the application for renewal.

(d) *Requirements and stipulations.* The lease will provide for an allowance of forage for wildlife, and within the discretion of the signing officer the number of livestock to be grazed, proper grazing season or reservations for authorized trailing across the land, and will contain the standard provisions set forth in the combined application and lease form, together with any other terms, conditions, or reservations which the signing officer in his discretion may deem necessary and proper.

(e) *Subleases.* No part of the leased lands may be subleased.

§ 4122.3–2 Leases of withdrawn or reserved lands; preference right leases for lands restored from withdrawal.

(a) The signing officer may issue leases for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[2] if the use of the land for grazing is not inconsistent with the purposes of the withdrawal. Lands included in stock driveway and public water reserve withdrawals may be leased in accordance with § 2321.3 of this chapter. Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed for the protection and use of the land for the purpose for which it was withdrawn or reserved.

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[2] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of February 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with principles of section 15 leases, under authority of subsection (I) of section 4, act of December 5, 1924 (43 Stat. 703, 43 U.S.C. sec. 501). Those lands withdrawn for reclamation purposes which are not subject to the Cooperative Agreement of February 28, 1945, will, upon restoration from the reclamation withdrawal become subject to the provisions of paragraph (b) of this section.

(b) Where public lands are restored from a withdrawal and the signing officer determines that a grazing lease for the lands may be issued, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the land immediately prior to their restoration, shall have a superior preference right to lease the restored lands previously used by him. The preference right must be asserted and an application for lease on a form approved by the Director (see § 4122.2–1) must be filed not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The new lease will be dated as of the first day following the end of such current lease year, or as of the date of its issuance, in the discretion of the signing officer and for such term as he may determine.

§ 4122.3–3 Rentals, schedule of grazing fees; billing notices; effect of failure to pay.

(a) The annual rental charge for the use of the leased land will be based on the number of acres under lease, the estimated grazing capacity in AUMs (animal unit months), and the rate per AUM indicated in the then-current schedule of grazing fees established by the Director, Bureau of Land Management. The schedule of grazing fees will be established and may be modified, revised, or amended as the Director may determine from time to time and notice thereof shall be published in the FEDERAL REGISTER. The schedule rate will be effective (1) immediately as to new leases issued after date of publication; (2) 30 days after publication as to existing leases, the rental period of which begins after the 30-day period. The minimum rental on a lease shall not be less than $1 per annum.

(b) Rental groups: (1) Where the rental charge for a new lease is $50 or less for the full term of the lease, the entire amount shall be paid in advance and the rental charges will not be revised during the term of the lease. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5–3 and 4122.3–5.

(2) Where the rental for the entire lease term exceeds $50 and the rental for the first three-year period is $100 or less, the total amount for such three-year period shall be paid in advance. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5–3 and 4122.3–5. Rental charges may be revised at the end of each three-year period based on the grazing fee schedule then in effect. Billing notices will be issued prior to the termination of each three-year period and the rental is due and payable upon receipt of the billing notice.

(3) Where the amount of the rental charge for the first three-year period would exceed $100, the rental shall be charged and paid annually based on the then effective grazing fee schedule. A billing notice for the amount of such annual rental will be sent each lessee in advance and is due and payable upon receipt. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5–3 and 4122.3–5.

(c) Effect of failure to pay: The first rental payment required under a proposed lease in accordance with this section shall be made within 10 days from receipt of the lease form; if not paid within such time the lease shall be null and void and of no effect and all rights of the proposed lessee thereunder or under the application upon which it is based shall be considered as terminated. Subsequent rental payments for succeeding lease periods as required by paragraph (b) (2) or (3) of this section are payable in advance. In any event, if such payment is not received in the proper office by the last day of the current lease period, or within 10 days of lessees' receipt of the billing notice whichever is the later, then the lease shall be considered as cancelled and all rights thereunder terminated as of the end of such current lease period.

(d) No refund of rentals properly paid in accordance with the regulations in this part and the terms of the lease will be made because of a failure to use the grazing privileges granted by the lease, except that during periods of range depletion due to severe drouth or other natural causes or in case of a general epidemic of disease during the life of the lease the Director will in his discretion remit, refund, reduce in whole or in part, or postpone the payment of rentals for such period of depletion of general epidemic.

§ 4122.3–4 Assignment of lease.

The lessee may assign the lease only with the consent of the signing officer. The proposed assignment must be filed with the signing officer within 90 days from date of its execution, and shall contain all the terms and conditions agreed upon between the parties, and the assignee's agreement to be bound by the terms of the lease, together with triplicate copies of the combined application and lease form as approved by the Director, properly executed by the assignee, setting forth all the data required thereby. No assignment will be recognized nor will it confer on the assignee any rights to the leased area until a lease therefor is issued to him.

§ 4122.3–5 Lease lands subject to disposition; compensation to lessee for loss of improvements.

(a) Lands embraced in a grazing lease are subject to disposition under the provisions of the Act of June 28, 1934 (48 Stat. 1272, 1274), as amended, or other public land laws. Before any application for such disposition is allowed, evidence must be furnished that the applicant has agreed to compensate the lessee and the United States for any grazing improvements placed on the lands under the authority of the lease, permit, or cooperative agreement in an amount and manner to be mutually agreed upon. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lien or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. If the parties are unable to agree as to the amount, manner, and time for compensation for such improvements, the amount, manner, and time shall be fixed by the authorized officer. The failure of the applicant to comply with the agreement or the conditions fixed by the authorized officer shall be just cause for cancellation of any right or interest in the lands acquired by the applicant by reason of the allowance of his application.

(b) Where part of the leased lands are disposed of as provided by this section, the subsequent annual rental charges will be reduced proportionately to reflect the loss of the lands from the leasehold. Such reduced rentals shall apply to rentals for the lease years commencing subsequent to the notice of such reduction.

§ 4122.4 Construction, maintenance, and removal of improvements.

§ 4122.4–1 Permit required.

After the issuance of a lease, the lessee may fence the lands or any part thereof, develop water by wells, tanks, water holes, or otherwise, and make or construct other improvements for grazing or stock raising purposes, so long as such improvements do not impair the value of the lands or interfere with other uses: *Provided,* That a permit or cooperative agreement is obtained under the procedure set forth in this section. The lessee will be required to comply with the provisions of the laws of the state in which the leased lands are located with respect to the cost and maintenance of fences.

§ 4122.4–2 Applications for permits and cooperative agreements.

Applications for permits, cooperative agreements, or arrangements to construct and maintain range improvements shall set forth the location of such improvements by legal subdivision of the public land survey, the necessity, use, cost, and description of such improvements, item by item, shall designate the time and manner of their construction, the period of use, the method of operation, protection, repair, removal, or other disposition, and shall include any other pertinent information. When necessary to explain properly the improvements and matters connected therewith, the application shall be accompanied by a sketch of the improvements with specifications and a map showing the location of the improvements. Applications for a permit shall be made on a form approved by the Director and shall be filed in triplicate with the signing officer. Application for a cooperative agreement shall be made on a form approved by the Director.

§ 4122.4–3 Action on the application.

Action will be taken on the application by the signing officer. If the application is approved, the signing officer will issue a permit or enter into a cooperative agreement for the construction and maintenance of the improvements which have been approved.

§ 4122.4–4 Removal of improvements.

(a) Upon the expiration of the lease or its earlier termination, the signing officer may in his discretion and upon written application filed by the lessee not more than 30 days after date of such expiration or termination, require a proposed subsequent lessee, prior to the execution of a new lease, to agree to compensate the lessee for any grazing improvements of a permanent nature that have been placed upon the leased lands under authority of a section 15 lease executed prior to November 4, 1948, or thereafter, under a permit issued under § 4122.4–2. The amount of such compensation shall be determined in accordance with the procedure set forth in § 4122.3–5. The failure of the subsequent lessee to pay the lessee in accordance with such agreement shall be just cause for cancellation of the subsequent lessee's lease.

(b) The lessee will be allowed three months from the date of expiration or termination of the lease within which to remove such improvements as are not disposed of in the manner set forth above; if not removed or otherwise disposed of within the said period such improvements shall become the property of the United States. No improvements may be removed at any time the lessee is in default with respect to the lease.

§ 4122.5 Supervision and management of leased lands.

§ 4122.5–1 Access.

The issuance of a grazing lease does not alter or restrict the right of access across the leased lands by licensed hunters or fishermen or restrict their right to hunt and fish on such lands in accordance with the laws of the United States or of the state in which the lands are located, nor may the lessee interfere with such rights. Nor shall such lease restrict or limit prospecting, locating, developing, mining or patenting the mineral resources in the leased lands; miners, prospectors and mineral lessees of the United States and all other authorized persons shall be entitled to enter the leased lands.

§ 4122.5–2 Inspection of leased premises.

The land described in the lease shall be subject to inspection at all reasonable times by duly authorized representatives of the Department of the Interior. Other Federal agents, as well as game wardens, shall be permitted access to the lands in connection with necessary official business.

§ 4122.5–3 Reduction in leased area; adjustment of grazing use to conform with changes in grazing capacity.

The leased area may be reduced if it is determined that such area is required for the protection of sources of water supply to communities, or for camping places, stock driveways, roads and trails, or town sites, or for feeding grounds near communities for the use of domestic livestock or near the slaughtering or shipping points for use of stock to be marketed or for other public purposes; the authorized grazing use may be adjusted to conform to changes in grazing capacity estimates. In the case of any such reduction or adjustment, a proportionate adjustment will be made in the rental for the lease years commencing subsequent to the notice of such reduction or adjustment.

§ 4122.5–4 Temporary closing of leased area.

The State Director, in his discretion, may close temporarily to grazing, portions of the leased lands whenever, because of depletion of the vegetal cover due to drought, epidemic, fire, or any other cause, such action is necessary to restore the forage on the range to its normal condition. Such temporary closing will not operate to exclude such lands from the lease.

§ 4122.5–5 Crossing permits.

Upon application filed with the authorized officer by any person showing the necessity for crossing the Federal land with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

§ 4122.5–6 Trespass.

Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this Part or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts. (See § 9239.3–1 of this chapter for detailed trespass regulations.)

§ 4122.6 Cancellation.

Except as otherwise provided in § 4122.3–3, if the lessee shall fail to comply with any of the provisions of the regulations in this part or of the lease or of any cooperative agreement on a form approved by the Director entered into with the Bureau of Land Management for the benefit of the lease, and such default shall continue for 30 days after service of written notice thereof, or if the lease was issued improperly through error with respect to a material fact or facts, the lease may be terminated and cancelled by the authorized officer.

§ 4122.7 Pledge of leases as security for loans; applications for extension of lease by borrower-lessee.

(a) A lease may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may obtain from the authorized officer a written statement concerning the status of the grazing lease and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) An application by a borrower-lessee for an extension of the lease term should be executed and filed in triplicate on a form approved by the Director. When it appears that such extension will be in accordance with applicable law and not contrary to the public interest, the signing officer in his discretion may extend the lease for a period not to exceed 10 years from the date of the loan subject to such terms and conditions as are then provided by the regulations in this part, and by the signing officer.

(c) If the property of the lessee which was the basis for the granting of a preference right is acquired by the lending agency through foreclosure or otherwise, such agency or its occupants of the property or a purchaser of the property from the agency, if qualified, may apply on a form approved by the Director to be recognized as the new lessee. If, in selling the property, the lending agency takes back the mortgage on the property the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files in the office of the authorized officer notice that it has made a loan and has accepted a grazing lease as security therefor, in conformity with the provisions of this section, such agency will be advised of any adverse action taken affecting the lease, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the Bureau or any of its employees.

§ 4122.8 Appeals; filing.

An appeal from any decision rendered pursuant to §§ 4122.0 to 4122.8, inclusive, may be taken to the Director and the Secretary, in accordance with appeals and contests (Parts 1840 and 1850 of this chapter). The appeal should be filed with the officer who rendered the decision.

SUBCHAPTER I—TECHNICAL SERVICES (9000)

Group 9200—Protection

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

AUTHORITY: The provisions of this Part 9230 issued under R.S. 2478; 43 U.S.C. 1201.

§ 9239.3 Grazing

§ 9239.3–1 Outside grazing districts.

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this subpart or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts.

(b) A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated shall be in default and shall be subject to the provisions of § 4122.6 of this chapter. In addition he may be subject to trespass action in accordance with the practices and procedures indicated in §§ 4113.1–1, 4113.1–3 (a), (c), (d), 4113.1–4, and 4113.1–7 of this chapter, modified so far as practicable and necessary to include Federal land outside of established grazing districts.

(c) When the alleged trespasser is not a lessee of lands under the regulations of this subpart the signing officer may take action against the trespasser in accordance with the practices and procedures in §§ 4113.1–1, 4113.1–3 (a), (c), (d), 4113.1–4, and 4113.1–7 of this chapter modified so far as practicable and necessary to include lands subject to lease under the provisions of this subpart or within a stock driveway.

This Circular replaces and revokes all of Circulars 2141, 2114, 2097, 2090, 2080, 2075, 2052, 1811, 1780, 1779, and 1760 relating to 43 CFR Parts 4110, 160 and 161.

GPO 842-135

Whitlock

Circular No. 2075

GRAZING REGULATIONS for the NATIONAL LAND RESERVE

MARCH 3, 1849

U. S. DEPARTMENT OF THE INTERIOR

Stewart L. Udall, Secretary
John A. Carver, Jr., Assistant Secretary,
Public Land Management

BUREAU OF LAND MANAGEMENT

Karl S. Landstrom, Director

January 1962

PREFACE

The regulations contained herein are applicable to the use, management, and protection of the 168,000,000 acres of the national land reserve governed by the provisions of the Taylor Grazing Act of June 28, 1934, as amended and supplemented.

Part 161, the Federal Range Code for Grazing Districts, is applicable to the 152,000,000 acres administered within the Bureau of Land Management's 59 grazing districts. It provides the necessary regulations for intensive management of the national land reserve.

Part 160 provides regulation for the use and management of the 26,000,000 acres that have not been included within grazing districts because of their scattered location pattern. Such lands are used for grazing purposes under lease arrangements.

These regulations now represent many modifications of the original regulations promulgated following passage of the Taylor Grazing Act in 1934. Such amendments have been found necessary to meet more effectively the objectives of the act by improving the orderly use of the land, preventing of overgrazing and range depletion, and stabilizing the livestock industry dependent upon the public range.

Karl S. Landstrom

Director

CIRCULAR 2075

TITLE 43 PUBLIC LANDS

INTERIOR

CHAPTER 1 - BUREAU OF LAND MANAGEMENT

Part 161 - THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

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Circular 2075

Part 161—The Federal Range Code for Grazing Districts

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161.19 Saving clause.

AUTHORITY: Sections 161.1 to 161.19 issued under sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

Sec. 161 —*Basic policy and plan of administration*—(a) *Purposes; general requirements.* Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promote the highest use of the public lands within grazing districts which have been or hereafter are established, possession or control of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the Federal range will be required of all users.

(b) *Preference applicants.* Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in a livestock business, bona fide occupants or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner specified in sec. 161.6. Provision will be made for other applicants so far as Federal range remains available.

(c) *Permits; annual licenses.* Grazing permits may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing; a recommendation thereon made by the advisory board, and approval thereof given by the District Manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. The practice of issuing an annual license will be continued until such time as a permit is issued. Upon the issuance of a permit any outstanding license or part thereof which has been granted on the same qualifications on which the permit is based will terminate. Upon expiration of a term permit an annual license may be issued, pending issuance of a new term permit.

Sec. 161.2 *Definitions.* Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management in or pursuant to the Federal Range Code for Grazing Districts (this part), unless the context otherwise requires:

(a) The "act" means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315, 315a–315r), as amended and supplemented.

(b) "The Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) The "Secretary" means the Secretary of the Interior or his authorized agent.

(d) The "Director" means the Director of the Bureau of Land Management or his authorized agent.

(e) "State Director" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(f) "Federal range" means land within established grazing districts administered by the Bureau of Land Management under the Federal Range Code for Grazing Districts (this part), including the vacant, unappropriated, and unreserved public land of the United States chiefly valuable for grazing and forage crops; State, County, and privately owned land leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land.

(g) "Property" means privately owned or controlled land or water used in range livestock operations.

(h) "Base property" means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(i) "Base property qualifications" means the maximum amount of grazing privileges on Federal range properly allowable to base properties in class 1 or class 2.

(j) "Forage land" means land the principal use of which is the production of natural or cultivated feed for livestock.

(k)(1) "Land dependent by use" means forage land other than Federal range of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the "priority period", was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years of such priority period in connection with substantially the same part of the public domain, now part of the Federal range. Such land may be (i) parallel land, i.e., land of the same character, interspersed with, and grazed at the same time as the Federal range on which grazing privileges may be granted, except in those grazing districts which by special rule have excluded parallel land as base property,[1] (ii) land of different character than the Federal range and which properly supports the permitted livestock during all or part of the period that the Federal range is closed to grazing, or (iii) a combination of these two types of land. The priority period shall be the five-year period immediately preceding

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[1] Such rules were adopted in Montana Grazing District No. 5, Utah Grazing District No. 1, and all grazing districts in Oregon.

June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) No land shall be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year after the date when the Federal range used in creating the dependency by use first became a part of a grazing district, except that if the Federal range used in creating the dependency by use became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date. Only the last set of base properties used during the priority period by a livestock operation can be invested with dependency by use by such operation.

(3) The extent to which grazing licenses or permits will be granted on the basis of dependency by use of land, shall be governed by the following:

(i) It shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of any two consecutive years or any three years in which use was actually made during the priority period, whichever is more favorable to the applicant, on that part of the public land which, at the time of the issuance of the license or permit, is Federal range.

(ii) It shall not exceed the amount of forage needed for the number of livestock creating such dependency by use that were customarily and properly sustained on the base property during the priority period and continue to use such property to the same extent, except that in no instance shall the use of base property be for less than the minimum period established under sec. 161.4. The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that necessary for the proper support of the number of livestock used in creating the dependency by use (class 1) the base property, to the extent of such excess forage capacity, may be treated as dependent by location (class 2) if so qualified.

(iii) Whenever the dependency by use of two or more base properties was created by the use of all or part of the same Federal range, during the same or at different seasons of the year, by two or more livestock operations, the relative dependency by use of each of the base properties shall be proportionate to the average annual use actually and properly made of the Federal range during the priority period by each of the livestock operations.

(l) "Land dependent by location" means forage land other than Federal range, which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(m) "Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by the grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under Sec. 161.8 (b), the charge for one horse grazing on the Federal range for one month shall be at twice the rate charged for one cow grazing for the same period.

(n) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(o) "Full-time water" means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(p) (1) "Prior water" is water which, during all or not less than two years of the priority period was used to service certain public domain now part of the Federal range for a livestock operation that was established, permanent, and continuing, and which normally involved the grazing of livestock on the same areas of public land for a certain portion or portions of the years of such use. For the purpose of this definition the priority period shall be the five-year period immediately preceding June 28, 1934, except that in any area placed within a grazing district or added to an existing district by boundary modification after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) Where a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, have served to invest such water with the attribute of priority, but such livestock operation subsequently ceased using such water or waters and used other water or waters in such manner as to invest them, too, with priority, only the latter water or waters shall be considered as prior, unless the former are also prior because of use by another livestock operation.

(3) No water shall be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district except that when such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

(4) The extent to which grazing privileges will be granted on the basis of the priority of water shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of the years in which use was actually made during the priority period, on substantially that part of the public lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(q) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

(r) "Adjudication of grazing privileges" is the determination of the qualifications for grazing privileges of the base properties, land (sec. 161.2(k)(1)) or water (sec. 161.2 (p)(1)), offered in support of applications for grazing licenses or permits in a range unit or area, and the subsequent equitable apportionment among the applicants of the forage production within the proper grazing season and capacity of the particular unit or area of Federal range, and acceptance by the applicants of the grazing privileges based upon the apportionment or its substantiation in a decision by an examiner, the Director, or the Secretary upon appeal. (Applicable provisions are sections 161.1 to 161.5, inclusive; sec. 161.6(a) and (b); sec. 161.6(e)(1) to (4), inclusive; sec. 161.6(f); sec. 161.6(g); sec. 161.9 and sec. 161.10.)

Sec. 161.3 *Qualifications of applicants*--(a) *Qualifications.* An applicant for a grazing license or permit is qualified if engaged in the livestock business and:

(1) Is a citizen of the United States, or

(2) Has on file before a court of competent jurisdiction a valid declaration of intention

to become a citizen or a valid petition for naturalization, or

(3) Is a group, association, or corporation authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, and the controlling interest in which is vested in persons who would be qualified as individual applicants under subparagraphs (1) or (2) of this paragraph.

(b) *Effect of transfer arising through operation of law.* The acquisition of rights in base property by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, based on such property, for a period of two years after such acquisition. Upon the failure of such person to qualify within the two year period the license or permit will be subject to cancellation in accordance with sec. 161.9(d).

Sec. 161.4 *Minimum requirements; classification of base properties.* (a) The District Manager, after recommendation by the advisory board, shall establish minimum base property requirements as a condition of qualification for the issuance of a license or permit in each district or unit thereof, taking into consideration the availability of base properties for proper use with and their relative dependence upon Federal range, land and water conditions, and other factors affecting livestock operations in the area according to customary use and best practices for good range management.

(b) The District Manager after recommendation by the advisory board will classify base properties as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

Sec. 161.5 *Rating and classification of Federal range*--(a) *Grazing capacity; seasons and maximum annual period of use.* The District Manager, after recommendation by the advisory board, will rate the grazing capacity of each unit or area in a grazing district and will classify each for the proper seasons of use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range therein during any one year.

(b) *Wildlife; allowance for maintenance.* In each grazing district a sufficient grazing capacity of Federal range suitable for wildlife will be reserved by the District Manager after consulting with wildlife interests and the advisory board, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *Designation of ranges for particular kinds of livestock.* The District Manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the Federal range.

(d) *Unit-wide or area-wide adjudication.* (1) The District Manager, after recommendation by the advisory board, may make a simultaneous classification under sec. 161.4 of all offered base properties within a single administrative unit or grazing area and may allocate in a single action the available Federal range within the unit or area upon which such base properties are dependent.

(2) The District Manager shall give written notice by certified mail of such classification and allocation to the persons offering such base properties, naming a place and date not less than 30 days thereafter to file protest to the advisory board, in accordance with sec. 161.9(b). Thereafter, and provided there is then pending a valid application for grazing privileges, the District Manager will render his final decision thereon and will allow the right of appeal to the examiner in accordance with sec. 161.10.

(e) *Diminution of available Federal range.* Federal range lands to be used under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of a pending or proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with sec. 296.3 of this chapter, and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Part 221 of this chapter.

Sec. 161.6 *Issuance of licenses and permits.* Licenses or permits will be issued in the following order:

(a) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(b) *Regular licenses and permits; number of livestock.* (1) Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

(2) Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license or permit may, upon written approval of the District Manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(i) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(ii) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(iii) Such use will not be detrimental to the Federal range, and

(iv) Such use will not adversely affect other licensees or permittees.

(c) *Exchange of use licenses.* Exchange of use licenses may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land, without payment of grazing fees, provided that during the term of the license the Bureau shall have the management and control of such non-Federal land for grazing purposes.

(d) *Non-renewable licenses.* Non-renewable licenses may be issued to non-preference applicants only for the period specified by the District Manager and for the number of livestock for which range is temporarily available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

(e) *Terms and conditions.* The issuance and continued effectiveness of all regular licenses and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation.

(2) No license or permit will provide for the grazing livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the grazing capacity of the Federal range to be used, as determined by the District Manager, except as may be allowed under paragraphs (f)(3) and (5) of this section.

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(6) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately to the reduction in available grazing capacity caused by the loss of such Federal range.

(7) If a licensee or permittee for two consecutive years ceases to make substantial use of his base property in connection with his year-round livestock operation, the authorized use under such license or permit and the qualifications of the base property may be subject to reduction in proportion to the diminished use of the base property.

(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the District Manager; except that, if the licensee or permittee notifies the District Manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the District Manager shall determine; or

(ii) All or part of such other lands or grazing privileges as are necessary to his year round operation, the license or permit will be subject to reduction in proportion to the loss of such necessary lands or grazing privileges unless the licensee or permittee notifies the District Manager within 30 days after such loss and thereafter within the time allowed by the District Manager after recommendation by the advisory board acquires ownership or control of other lands or grazing privileges sufficient to assure a year-round operation.

(9) Base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To include in an application for a license or permit or renewal thereof, the entire base property qualifications for active, nonuse, or combination of active and nonuse, except where the base property qualifications are included in an outstanding current term permit, or where the allowable use has been reduced under paragraphs (f)(1)(iii), (3), and (5) of this section, or sec. 161.12(e).

(ii) To accept a license or permit issued pursuant to such application.

(10) The failure for any two consecutive years to make substantial use as determined by the District Manager, after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit, may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Nonuse, in whole or in part, of grazing privileges under a license or permit may be authorized by the District Manager, upon application by the licensee or permittee, after reference to the advisory board, for the following reasons: conservation and protec-

tion of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit in whole or in part may result in a proportionate loss of the base property qualifications supporting such license or permit.

(13)(i) No readjudication of any license or permit, including free use license, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

(ii) The Bureau of Land Management may make adjustments in licenses and permits at any time when necessary to comply with the Federal Range Code for Grazing Districts.

(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the District Manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s), as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the District Manager.

(iii) May take necessary action to enforce the requirements under subdivisions (i) and (ii) of this subparagraph, in accordance with the provisions of sec. 161.9(d).

(f) *Reduction.* (1) If necessary to reach the grazing capacity of any area of the Federal range after licenses or permits have been issued, reductions of grazing privileges applicable to such area shall be made in the following order:

(i) Nonrenewable licenses.

(ii) Regular licenses or permits to the extent, if any, to which they are in excess of the base property qualifications or have been otherwise improperly issued.

(iii) Regular licenses or permits properly issued, on an equal percentage basis.

(2) Such reductions may be made either by reducing the number of livestock or the time on the Federal range involved, or by both methods, as determined by the District Manager after recommendation by the advisory board.

(3) When the District Manager, after recommendation by the advisory board, determines that the imposition of the full amount of certain reductions in grazing privileges from current licensed or permitted use necessary to reach the grazing capacity of a range area would impose a serious hardship on the range users, he is not required to impose the full amount of the reduction forthwith, but will then schedule a percentage of the required reduction during each of the three years immediately following the determination as the circumstances of each case may warrant, except when the total reduction is less than fifteen percent it may not be so scheduled but will be imposed forthwith in the full amount.

(4) The District Manager will notify each affected licensee or permittee by certified mail of his decision to make a reduction in grazing privileges to reach the grazing capacity of any Federal range area and of the manner in which the reduction is to be made. The District Manager's decision notice will allow thirty days from receipt thereof in which to file any desired appeal in accordance with Sec. 161.10 of this part. If no appeal is filed within the thirty-day period, the reduction will be made in accord-

ance with the District Manager's decision, and no further appeal will be allowed even though the reduction may be scheduled under subparagraph (3) of this paragraph to cover a period of time up to three years. If any timely appeal is filed after receipt of the District Manager's decision notice, the reduction for the entire Federal range area under consideration will be deferred pending the completion of the appeal and hearing procedure. Any reduction provided by the ultimate decision will be applied to its full extent immediately after the effective date of that decision. If, however, the final decision on appeal is rendered within the three-year reduction period established by the decision notice of the District Manager, the required adjustment may be apportioned over the remaining portion of that period. In the event that the orderly administration of the range or other public interest so requires, any decision may be placed in full force and effect in accordance with the provisions of Sec. 161.10(i)(2).

(5) When the District Manager determines that the potential grazing capacity, with improvements, of a Federal range area is significantly greater than the present grazing capacity, he may, after obtaining advice from the advisory board, issue a current license for active use not to exceed the animal unit months of forage presently available, and issue a non-use license for the difference between the use allowable by the limits of the present grazing capacity and the potential. This difference will be held in a suspense status as reflected in the non-use portion of the license, provided that the aggregate of active and non-use privileges shall not exceed the extent of the base property qualifications of the licensee or permittee. Thereafter, when the District Manager determines that a significant portion of the potential grazing capacity has been attained, he may increase the active authorized use under the license or permit to that extent.

(g) *Allotments; agreements; increases.* (1) Allotments of Federal range will be made to licensees or permittees when conditions warrant. Division of the range by agreement or former practice will be followed where practicable, provided such division is in substantial conformity with the qualifications for grazing privileges of the respective applicants and the agreement is reduced to writing and approved by the District Manager.

(2) Increases in grazing capacity, when conditions warrant, and after recommendation of the advisory board and approval of the District Manager, will be apportioned in a manner that will assist in the stabilization of livestock operations controlling qualified base property, with emphasis being given to the restoration of reductions that have been imposed to reach the grazing capacity of a particular allotment or range area, and to allocation of increased grazing capacity to operators or interests whose efforts were responsible for such increases.

(h) *Administration of lands additionally available; preference right for lands restored from withdrawal.* (1) Any land within the exterior boundaries of a grazing district made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315M–1–315M–4), by the revocation of a withdrawal, or by the cancellation or relinquishment of a homestead entry or claim, or otherwise, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management.

(2) Where public lands are restored from withdrawal and the District Manager determines that the lands are available for grazing use, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to their restoration, shall have a superior preference to the

further grazing use of such lands. The preference right must be asserted and an application for license or permit, on Form 4–1283 obtainable from the District Manager must be filed with that officer not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The District Manager may issue to such applicant an annual license or a term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act, 43 U.S.C., 1952 ed., sec. 315(h)).

(i) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101 (1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U.S.C. App. 511 (1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the District Manager an application, in duplicate, setting forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the District Manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner terminated upon further application to the District Manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for not to exceed the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, or otherwise, such temporary license shall terminate as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the District Manager on an application for suspension of a license or permit under this paragraph may be appealed by the licensee or permittee to the Director, and from the Director to the Secretary of the Interior, in accordance with the rules of practice, Part 221 of this chapter.

(j) *Interest of Member of Congress prohibited.* No Member of or Delegate to Congress shall be admitted to any share or part of any license or permit issued under the act, or to derive any benefit to arise therefrom. (41 U.S.C. sec. 22; 18 U.S.C. secs. 431–433.)

Sec. 161.7 *Transfers of base property; base property qualifications; relinquishments.* (a) *Transfer of base property; effect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if qualified under sec. 161.3(a), to so much of the grazing privileges as are based thereon. Except as otherwise herein provided, the existing license or permit and the grazing privileges thereunder shall automatically and without further notice be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property; except that further grazing under the license or permit may be temporarily extended pursuant to request and notification filed in accordance with sec. 161.6(e)(8)(i); except, also, where the transfer arises as a result of testamentary disposition the existing license or permit may continue in effect until the end of the current grazing season. Thereafter applications for renewal of a license or permit shall be filed by the heirs, devisees, executor, administrator, or personal representative, as the case may be.

(2) A transferee shall, within 90 days from the date of transfer, file with the District Manager documentary evidence of the transfer and an application on Form 4–1283 for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred. Where, however, a transfer, or a different vesting in any manner, of a leasehold interest in land or water may result in interference with the stability of livestock operations or with proper range management, upon a finding to that effect by the District Manager, after reference to the advisory board, such land or water will lose its base property qualifications and grazing privileges based thereon will be denied.

(b) *Transfer of base property qualifications; limitations; consent of owner or encumbrancer; effect.* (1) A licensee or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with sec. 161.3(a). An application for approval of a transfer shall be filed with the District Manager on Form 4–1284 as to land base, or on Form 4–1285 as to water base.

(2) Transfer of base property qualifications may be made under the following conditions:

(i) When an applicant owns or controls base land or lands having a forage production in excess of that required to support the licensed or permitted livestock, the qualifications may be concentrated on that part of the property having the forage production required by and which will continue to be used for the support of such livestock.

(ii) When such qualifications are to be transferred from land owned or controlled by the applicant, to land owned or controlled by others, the transfer will be recognized only to the extent such qualifications do not exceed the forage production of the new base property.

(iii) When an applicant owns or controls base water, the qualifications may be transferred to another adequate water source which will service the same range area.

(3) No transfer will be allowed under this paragraph if it interferes with the stability of livestock operations or proper range management, or adversely affects the local economy. No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made, except that in an application for transfer of class 1 qualifications where the applicant for such transfer is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such consent will not be required. Upon approval of the application by the District Manager after reference to the

advisory board, the transfer shall be effective as of the date of filing of the application, and the base property from which the transfer is made will thereupon lose its qualifications to the extent indicated in the transfer.

(c) *Relinquishment of base property qualifications; limitation; effect.*

(c) *Relinquishment of base property qualifications; limitation; effect.* Upon request, the district manager may accept a written relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified: *Provided,* That no such relinquishment will be accepted without the written consent of the owner or owners, if other than the applicant, and any encumbrancer of the base property, except that if the applicant is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

dependency by use or priority thereof would not have been established, such owner's consent will not be required.

Sec. 161.8 *Fees; time of payment; refunds.*

(a) *Free-use licenses.* No fee will be charged for the issuance of a free-use license.

(b) ***Licenses and permits; rates.*** (1) **Each regular licensee or permittee, and** holder of a nonrenewable license will be charged fees, consisting of a grazing fee for use of the range and a range improvement fee, for the animal unit months authorized by the license or permit, at a rate per animal unit month. All billing shall be issued in accordance with the rates prescribed in subparagraph (2) of this paragraph. All livestock 6 months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No fees will be charged for livestock under 6 months of age. Range improvement fees may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any State or Federal agency, or any person, association, or corporation. A minimum annual charge of $10 will be made on all regular licenses or permits, and nonrenewable licenses.

(2) (i) The fee or fees for any fee year, beginning on March 1, will be established by the Secretary at a rate which is equivalent to a specified percentage, to be fixed by the Secretary, of the average of the prices per pound of beef and lamb, rounded to the nearest whole cent, which was paid to growers during the preceding calendar year in the markets of the 11 Western States, as determined by the Secretary based upon market prices as reported by the Department of Agriculture.

(ii) The fee for any fee year may be changed by the Secretary from that of the preceding year by fixing a new specified percentage of the average of the prices per pound of beef and lamb. The fee for any fee year shall, in any event, be adjusted by the Secretary, in addition to any percentage adjustment that may be made, to conform to changes in market price conditions whenever in the preceding calendar year there is a change in the average of such prices, rounded off to the nearest whole cent, of 2 cents or more above or below the corresponding average for the preceding year.

(iii) The fee or fees established by the Secretary for any fee year, including announcement of the portion thereof to be credited to the range improvement fund, will be published as a notice in the Federal Register. All regular billings shall be issued in accordance with the rate or rates prescribed in the notice.

filed with the District Manager by any person showing the necessity for crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $5 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

(d) ***Payment of fees; reduction or increase in numbers; modification of periods of use.*** No license or permit shall be issued or renewed until payment of all fees due the United States under the Federal Range Code for Grazing Districts has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice and are payable in advance of the first grazing period and for the full amount indicated on the fee notice; no license or permit shall be effective to authorize grazing use thereunder until such advance payment has been made.[2] A permit may be canceled or reduced pursuant to § 161.9(d) for failure to pay the fee in accordance with the fee notice. Any licensee or permittee who desires to make temporary use of the grazing privileges during any authorized grazing period or periods in a manner other than that authorized in his existing license or permit must file with the district manager a written request for such change in use at least 10 days prior to the beginning of any such grazing period. If the district manager approves the request he will issue an adjusted fee notice accordingly.

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(e) *Refunds.* No refund of fees properly paid will be made because of an unauthorized failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(1) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Director may in his discretion credit, remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period so long as the emergency exists.

(2) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be filed with the District Manager under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U.S.C. 95, et seq.), or such excess fees may be credited on subsequent fee notices.

Sec. 161.9 *Procedure in applications; protests*—(a) *Filing and consideration of applications; interdistrict agreements; recommendations; service of notice.* (1) Each year a date will be set by the District Manager prior to which all applications[3] for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) Applications for grazing licenses or permits will be considered first by the advisory board of the district in which the Federal range is located, except that applications of district advisers will be considered first by the District Manager, without reference to the advisory board.

(3) Where a grazing area or unit is located in one district, but is administered by the District Manager of an adjacent district pursuant to a formal interdistrict agreement, applications for grazing licenses or permits on such area or unit shall be filed with the District Manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the District Manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the District Manager and, if such recommendation is to any extend adverse, it shall set forth the reasons therefor. If such recommendation is favorable and the District Manager approves, he will notify the applicant by ordinary mail, which notice may be the fee billing. ¶If the advisory board recommendation is favorable but the District Manager disagrees, notice will be served on the applicant in person or by certified mail sent to his address of record, setting forth the recommendation of the advisory board and the Manager's disapproval, together with the reason or reasons for a prospective adverse decision, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a date, not less than ten days thereafter, on or before which oral or written protest may be presented to the District Manager. If the recommendation of the board is to any extent

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[2] Any grazing on the Federal range within grazing districts in the absence of effective license or permit is unlawful and prohibited; such unauthorized grazing shall be deemed in trespass and may be proceeded against as provided in sec. 161.12, or by other action under the law.

[3] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

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a licensee or perm Manager may accept a relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications, to the extent specified, provided that no such relinquishment will be accepted without the written consent of the owner or owners, if other than the licensee or permittee, and any encumbrancer of the base property, except that if the licensee or permittee is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

Amended
Aug 17 1963
CR 2114

Sec. 161.8 *Fees; time of payment; refunds.* (a) *Free-use licenses.* No fee will be charged for the issuance of a free-use license.

(b) ***Licenses and permits; rates.*** (1) **Each regular licensee or permittee, and** holder of a nonrenewable license will be charged fees, consisting of a grazing fee for use of the range and a range improvement fee, for the animal unit months authorized by the license or permit, at a rate per animal unit month. All billing shall be issued in accordance with the rates prescribed in subparagraph (2) of this paragraph. All livestock 6 months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No fees will be charged for livestock under 6 months of age. Range improvement fees may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition

under six months of age. Range improvement fees, upon the recommendation of the advisory board and approval of the Director, may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any State or Federal agency, or any person, association, or corporation. A minimum annual charge of $5 will be made on all regular licenses or permits, and nonrenewable licenses.

Amended
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Note: The fees for the year beginning January 1, 1958, will be established at the rate equivalent to the average of prices of beef and lamb to the nearest whole cent, paid to growers during the calendar year 1957 in the markets of the eleven Western States, as determined by the Director of the Bureau of Land Management on the basis of marketing data for the preceding year furnished by the Agricultural Marketing Service, Department of Agriculture. In succeeding years a change in the fees will be made only when the average of such prices paid to the growers in the preceding year, rounded to the nearest whole cent, shall be two cents or more above or two cents or more below the fees then in effect. The fee rate, including the percentage of the total fee to be credited to range improvement, for 1958, and subsequent changes in such rate, will be published as a notice in the FEDERAL REGISTER. All regular billings shall be issued in accordance with the rate prescribed in the notice.

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(c) *Crossing permits.* Upon application filed with the District Manager by any person showing the necessity for crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $5 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

(d) *Payment of fees; reduction or increase in numbers; modification of periods of use.* No license or permit shall be issued or renewed until payment of all fees due the United States under the Federal Range Code for Grazing Districts has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice and are payable at least 15 days in advance of the first grazing period and for the full amount indicated on the fee notice; no license or permit shall be effective to authorize grazing use thereunder until such advance payment has been made.[2] A permit may be canceled or reduced pursuant to sec. 161.9(d) for failure to pay the fee in accordance with the fee notice. Any licensee or permittee who desires to make temporary use of the grazing privileges, during any authorized grazing period or periods in a manner other than that authorized in his existing license or permit must file with the District Manager a written request for such change in use at least 30 days prior to the beginning of any such grazing period. If the District Manager approves the request he will issue an adjusted fee notice accordingly.

(e) *Refunds.* No refund of fees properly paid will be made because of an unauthorized failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(1) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Director may in his discretion credit, remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period so long as the emergency exists.

(2) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be filed with the District Manager under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U.S.C. 95, et seq.), or such excess fees may be credited on subsequent fee notices.

Sec. 161.9 *Procedure in applications; protests*—(a) *Filing and consideration of applications; interdistrict agreements; recommendations; service of notice.* (1) Each year a date will be set by the District Manager prior to which all applications[3] for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) Applications for grazing licenses or permits will be considered first by the advisory board of the district in which the Federal range is located, except that applications of district advisers will be considered first by the District Manager, without reference to the advisory board.

(3) Where a grazing area or unit is located in one district, but is administered by the District Manager of an adjacent district pursuant to a formal interdistrict agreement, applications for grazing licenses or permits on such area or unit shall be filed with the District Manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the District Manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the District Manager and, if such recommendation is to any extend adverse, it shall set forth the reasons therefor. If such recommendation is favorable and the District Manager approves, he will notify the applicant by ordinary mail, which notice may be the fee billing. If the advisory board recommendation is favorable but the District Manager disagrees, notice will be served on the applicant in person or by certified mail sent to his address of record, setting forth the recommendation of the advisory board and the Manager's disapproval, together with the reason or reasons for a prospective adverse decision, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a date, not less than ten days thereafter, on or before which oral or written protest may be presented to the District Manager. If the recommendation of the board is to any extent

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[2] Any grazing on the Federal range within grazing districts in the absence of effective license or permit is unlawful and prohibited; such unauthorized grazing shall be deemed in trespass and may be proceeded against as provided in sec. 161.12, or by other action under the law.

[3] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

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(b) *Licenses and permits.* Each regular licensee or permittee, and holder of a non-renewable license will be charged fees, consisting of a grazing fee for the use of the range and a range improvement fee, for the animal unit months authorized by the license or permit, at a rate per animal unit month. Such rates, including the percentage of the total fee to be credited to range improvement, will be published as a notice in the FEDERAL REGISTER. All billing shall be issued in accordance with the rates prescribed in the notice. All livestock six months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No fees will be charged for livestock under six months of age. Range improvement fees, upon the recommendation of the advisory board and approval of the Director, may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any State or Federal agency, or any person, association, or corporation. A minimum annual charge of $5 will be made on all regular licenses or permits, and non-renewable licenses.

Note: The fees for the year beginning January 1, 1958, will be established at the rate equivalent to the average of prices of beef and lamb to the nearest whole cent, paid to growers during the calendar year 1957 in the markets of the eleven Western States, as determined by the Director of the Bureau of Land Management on the basis of marketing data for the preceding year furnished by the Agricultural Marketing Service, Department of Agriculture. In succeeding years a change in the fees will be made only when the average of such prices paid to the growers in the preceding year, rounded to the nearest whole cent, shall be two cents or more above or two cents or more below the fees then in effect. The fee rate, including the percentage of the total fee to be credited to range improvement, for 1958, and subsequent changes in such rate, will be published as a notice in the FEDERAL REGISTER. All regular billings shall be issued in accordance with the rate prescribed in the notice.

(c) *Crossing permits.* Upon application filed with the District Manager by any person showing the necessity for crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $5 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

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(d) *Payment of fees; reduction or increase in numbers; modification of periods of use.* No license or permit shall be issued or renewed until payment of all fees due the United States under the Federal Range Code for Grazing Districts has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice and are payable at least 15 days in advance of the first grazing period and for the full amount indicated on the fee notice; no license or permit shall be effective to authorize grazing use thereunder until such advance payment has been made.[2] A permit may be canceled or reduced pursuant to sec. 161.9(d) for failure to pay the fee in accordance with the fee notice. Any licensee or permittee who desires to make temporary use of the grazing privileges, during any authorized grazing period or periods in a manner other than that authorized in his existing license or permit must file with the District Manager a written request for such change in use at least 30 days prior to the beginning of any such grazing period. If the District Manager approves the request he will issue an adjusted fee notice accordingly.

(e) *Refunds.* No refund of fees properly paid will be made because of an unauthorized failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(1) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Director may in his discretion credit, remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period so long as the emergency exists.

(2) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be filed with the District Manager under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U.S.C. 95, et seq.), or such excess fees may be credited on subsequent fee notices.

Sec. 161.9 *Procedure in applications; protests*—(a) *Filing and consideration of applications; interdistrict agreements; recommendations; service of notice.* (1) Each year a date will be set by the District Manager prior to which all applications[3] for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) Applications for grazing licenses or permits will be considered first by the advisory board of the district in which the Federal range is located, except that applications of district advisers will be considered first by the District Manager, without reference to the advisory board.

(3) Where a grazing area or unit is located in one district, but is administered by the District Manager of an adjacent district pursuant to a formal interdistrict agreement, applications for grazing licenses or permits on such area or unit shall be filed with the District Manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the District Manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the District Manager and, if such recommendation is to any extend adverse, it shall set forth the reasons therefor. If such recommendation is favorable and the District Manager approves, he will notify the applicant by ordinary mail, which notice may be the fee billing. ¶ If the advisory board recommendation is favorable but the District Manager disagrees, notice will be served on the applicant in person or by certified mail sent to his address of record, setting forth the recommendation of the advisory board and the Manager's disapproval, together with the reason or reasons for a prospective adverse decision, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a date, not less than ten days thereafter, on or before which oral or written protest may be presented to the District Manager. If the recommendation of the board is to any extent

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[2] Any grazing on the Federal range within grazing districts in the absence of effective license or permit is unlawful and prohibited; such unauthorized grazing shall be deemed in trespass and may be proceeded against as provided in sec. 161.12, or by other action under the law.

[3] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

adverse, notice will be served on the applicant in person or by certified mail sent to his address of record, setting out the reason or reasons given by the advisory board for the adverse recommendation, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a place and date, not less than ten days thereafter, when protest against the recommendation will be heard. The District Manager may also serve notice on any other applicant or applicants who may be directly affected by the adoption of the advisory board recommendation or the prospective decision of the Manager which will allow an appropriate protest. In any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may recommend that a protest meeting not be held, whereupon the District Manager may accept the recommendation of the board as its final consideration.

(b) *Protests; reconsideration by advisory boards; service of notice.* At the time and place fixed for the protest meeting, any licensee, permittee, or applicant may appear, in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the District Manager. If such recommendation is favorable to the protestant, and the District Manager approves, he will notify the protestant thereof by ordinary mail, which notice may be the fee billing. If the recommendation is to any extent adverse, and the District Manager approves, a notice giving the reason or reasons therefor will be served on the protestant in person or by certified mail, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts that serve as controlling factors. Such notice will constitute the District Manager's final decision for purposes of appeal.

(c) *Allowance or rejection of application; modification; service of notice.* The District Manager, in the light of all facts and circumstances and after reference to the advisory board, may issue or refuse to issue a grazing license or permit. When the District Manager takes an adverse action on any application, a notice including a recital of the specific reasons for the action taken will be served on the applicant in person or by certified mail. The notice will advise the applicant of his privilege to appeal to an examiner.

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of sections 161.3 (b), 161.6 (e), 161.8 (d), 161.14 (d) or 161.15 (f). Except as otherwise specifically provided, in any such case or in any case in which it shall appear that a license or permit confers grazing privileges in excess of those properly allowable under this part, the District Manager will notify the licensee or permittee that the license or permit is thereby held for cancellation or reduction either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such action should not be made final. Such notice will set forth fully the reasons for the proposed action, specifically referring to the pertinent provisions of this part, and will be served on the licensee or permittee by certified mail or in person. In case of failure of the licensee or permittee to show cause within the time allowed, the license or permit will be canceled or reduced to the extent indicated in the notice. The District Manager will consider any cause shown and, if satisfied of its sufficiency, will close the case; if not satisfied as to its sufficiency, or if no cause is shown, he will notify the licensee or permittee in person or by certified mail that the cancellation or reduction will become final unless an appeal to the examiner is filed in accordance with sec. 161.10 (a).

Sec. 161.10 *Appeals and hearings*--(a) *Appeal to examiner; motion to dismiss.* (1) Any applicant whose interest is adversely affected by a final decision of the District Manager may appeal to an examiner by filing his appeal in the office of the District Manager within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the decision of the District Manager is in error. All grounds of error not stated will be considered as waived, and no such waived grounds of error may be presented at the hearing unless ordered or permitted by the examiner.

(2) Any applicant for a grazing license or permit or any other person who, after proper notification, fails to protest or appeal a decision of the District Manager within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in such final decision.

(3) When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(4) The District Manager will promptly forward the appeal to the State Director. Within thirty days after his receipt of the appeal the State Director may file on behalf of the District Manager a written motion, serving a copy thereof upon the appellant, requesting that the appeal be dismissed for the reason that it is frivolous, the appeal was filed late, the errors are not clearly and concisely stated, the issues are immaterial, the issue or issues were included in a prior final decision from which no timely appeal was made, or all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The appellant may file a written answer within twenty days after service of the motion upon him. The appeal, motion, the proofs of service, and the answers will be transmitted to the examiner, who shall rule on the motion, and, if the motion is sustained, dismiss the appeal by written order.

(b) *Time and place of hearing; notice; intervenors.* At least thirty days before the date set the District Manager will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the District Manager may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the examiner as an intervener in the appeal.

(c) *Authority of examiner; subpoenas; depositions; continuances; witness fees.* (1) The examiner is vested with the duty and general authority to conduct the hearing in an orderly, impartial and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a decision. The examiner shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by Part 221 of this chapter, to the extent such regulations are applicable.

(2) The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with the rules of practice (Part 221 of this chapter), and when the ends of justice will be served thereby. Continuances will not be granted unless they are clearly justified and timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance

should promptly file a request for continuance with the examiner, along with proof of service of the request on the District Manager and on other parties. The District Manager and other parties shall have five days from receipt of the request to file objection to the continuance. The examiner will then rule on the request, and, if granted, set a new date for the hearing. The District Manager will notify all interested persons of the new date.

(d) *Conduct of hearing before examiner.* (1) The appellant, the State Director or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented. Issues which appear to the examiner to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the State Director or his representative, unless the examiner rules that such issue is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties.

(2) Unless the examiner orders otherwise, the State Director or his representative will then make the opening statement, setting forth the facts leading to the appeal (or issuance of the show cause order where that is involved). Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the examiner, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under this part as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the examiner.

(3) In the absence or upon denial of such motion the State Director or his representative and recognized intervenors may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every ruling of the examiner will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the opposing party may then make an offer of proof in rebuttal. The examiner will summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

(e) *Findings of fact and decision by examiner; notice; submission to Director* *for decision.* (1) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law unless waiver has been stipulated, and will render a decision upon all material issues of fact and law presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any further appeal. A copy of the decision shall be sent by certified mail to the appellant and all intervenors, or their attorneys of record.

(2) The Director may require, in any designated case, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by the rules of practice (Part 221 of this chapter).

(f) *Notice of appeal to the Director; furnishing copies of the transcript.* Within ten days after the receipt of the decision of the examiner any party, including State Director or his representative, desiring to appeal to the Director shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the State Director without charge, and to other appellants and to the intervenors, at a charge of ten cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervenor is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record, proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed through the office of the Hearing Examiner.

(g) *Appeals to the Director.* An appeal from any decision of the examiner shall be filed in the Office of the Director, Bureau of Land Management, Department of the Interior, Washington 25, D. C., together with any brief in support thereof, within thirty days after date of receipt of the transcript of testimony, or, if the transcript is not requested, within thirty days after receipt of the examiner's decision. Within the same period a copy of the appeal and of any brief must be served on each party named in the examiner's decision, and upon the State Director, either personally or by certified mail. Any party, including the State Director, opposing th appeal will be allowed twenty days fro date of receipt of the copy of the appeal an brief within which to file in the Office of the Director a reply brief, a copy of which must be served on the appellant(s) in the same period. The appeal in other respects shall be made in accordance with the rules of practice (Part 221 of this chapter).

(h) *Appeals to the Secretary of the Interior.* An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with the rules of practice (Part 221 of this chapter).

(i) *Effect of decision suspended during appeal.* (1) An appeal shall suspend the effect of the decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing privileges to be granted under the current application, an appellant who was granted grazing privileges in the preceding year may continue to use such privileges pending final action on the appeal, unless the decision appealed from is made immediately effective, as herein next provided.

(2) When the orderly administration of the range or other public interest so requires,

(i) the District Manager may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (ii) the examiner or the Director may provide in the decision on an appeal before such officer, that it shall be in full force and effect pending decision on and further appeal; (iii) the Director or the Secretary may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the District Manager pursuant to a decision shall be subject to modification or revocation by the Examiner, Director, or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under sec. 10(c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

(j) *Record as basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the State Director and as supported by and in accordance with the reliable, probative and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

(k) *Notice and proof of service.* Any notice of other document required to be served under this section shall be served in person or by certified mail sent to the last address of record. In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any document upon such attorney relating to the proceedings will be deemed to be service upon the party he represents. Proof of such service shall be filed in the same office where the notice or document was filed within fifteen days after such service, unless filed with the notice or document. Proof of service shall consist of the affidavit of the person making the personal service, signed acknowledgment of the person served, or the certified mail receipt.

(l) *Effect of substantial compliance.* No adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of this part.

Sec. 161.11 *General rules of the range*--(a) *Acts prohibited.* The following acts are prohibited on the Federal range:

(1) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(2) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(3) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(4) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(5) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law. Permits to carry on controlled burning of

vegetative cover or brush may be issued by the District Manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(6) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(7) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

(b) *Rules of fair range practice.* All licensees and permittees shall comply with the following rules of fair range practice:

(1) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating to the branding of livestock and sanitary requirements shall be followed.

(2) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the District Manager.

(3) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the District Manager. Upon request by the majority of the users of any community allotment of Federal range, the District Manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

(4) When so requested by the State Director or District Manager, the licensee or permittee shall join with the Bureau of Land Management in preparing a fire plan which shall set forth in detail the program for prevention, control, and extinguishment of fires, including the responsibility of the licensee or permittee for action on his range allotment and on adjacent Federal range.

Sec. 161.12 *Procedure for enforcement of rules and regulations.* A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule.

(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the District Manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the District Manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of this part or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the District Manager he will close the case; if satisfactory showing is not made within the time allowed, the violations alleged in the notice will be deemed to have been wilful and the District Manager will notify the State Director thereof for further action under paragraph (e) of this section.

(b) *Violations clearly wilful; special circumstances.* Whenever it appears to the District Manager that a violation is clearly wilful, grossly negligent, or repeated, or when the public health, safety, or interest requires, or when disciplinary action is advisable, the District Manager will refer the matter directly to the State Director for further action under paragraph (c) or (e) of this section, whichever is appropriate.

(c) *Unlawful grazing on the Federal range; determination of damages; removal of livestock; impoundment.* (1) Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice of his lien with the District Manager will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the District Manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(2) Where the owner of the trespassing livestock, or his representative, is known, the District Manager shall make a determination of the damage to the Federal range and other property of the United States and shall make a demand for payment upon the alleged violator, setting forth the foregoing values including the value of the forage consumed. Where the trespass grazing is not deemed to be clearly wilful the forage value shall be computed at the rate of $2 per animal unit month, or at the commercial rate if such rate is the higher; if the District Manager deems the trespass grazing to be clearly wilful, grossly negligent, or repeated he shall compute the forage value at $4 per animal unit month, or at twice the commercial rate if such amount is the higher.

(3) In any case where neither the owner of the trespassing livestock, or his representative, is known, or where conservation of the Federal range and of the forage thereon requires it, the District Manager, when so authorized by written order of the State Director, may take steps to remove the trespassing livestock by such methods and by such means not inconsistent with legislation which prohibits the use of airborne or motor-driven vehicles in the gathering of horses or burros, as may be necessary, and to dispose of them by sale or otherwise within not less than five (5) days after public notice of his intention to make such disposition, subject to the right of any owner or registered lienholder of such trespassing livestock to redeem the livestock within such nondisposal period upon payment of:

(i) The damage to the Federal range and other property of the United States.

(ii) The cost of such impoundment and removal.

(iii) The value of any forage consumed as determined in accordance with subparagraph (2) of this paragraph.

(4) If the amounts found to be due the United States in accordance with subparagraph (3), subdivisions (i), (ii), and (iii) of this paragraph are contested by the owner of the livestock, his representative, or lienholder, the trespassing livestock may be redeemed by the posting of a cash or corporate surety bond in lieu of immediate payment. Such bond will be adequate to insure full satisfaction of the claims made. A hearing will then be scheduled before an examiner of the Bureau of Land Management. The hearing will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence will be confined to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass. The examiner will render a written decision assessing the amounts due.

(5) Where conservation of the Federal range and the forage thereon requires it, the State Director may temporarily close a grazing district or any portion thereof, to grazing by any class of livestock to be specified in such order. Notice of the order shall be published in a local newspaper and shall be posted at the County Courthouse of the County in which the closed area lies. The

order shall require all owners of livestock affected thereby to remove such livestock from the area within not less than five days from date of publication of the notice. Thereafter the District Manager shall proceed to impound, remove, and dispose of, in the most humane manner in accordance with the provisions of this paragraph any such livestock trespassing or grazing in violation of the closing order.

(d) *Amicable settlement of civil cases involving unauthorized use of the Federal range or damage to Federal property.* Offers of settlement for the value of the forage consumed in trespass as determined in accordance with paragraph (c) (2) of this section and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provisions of the act or of the Federal Range Code for Grazing Districts in the amount of $2,000 or less may be accepted by the District Manager. Offers of settlement in excess of $2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for the consumed forage and damage involved until finally accepted by the District Manager or the State Director. Satisfaction of civil liability does not relieve the alleged violator of any criminal liability under Federal law. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Director that disciplinary action is advisable because of a wilful, grossly negligent, or repeated violation, he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit and the section or sections of the Federal Range Code for Grazing Districts, or of the Act alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the value of the forage consumed, as determined in accordance with paragraph (c) (2) of this section. The notice will cite the licensee or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license, permit, or base property qualifications should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

(2) The hearing upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, including the value of any forage consumed, due the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages, including the value of any forage consumed, as determined in accordance with paragraph (c) (2) of this section, and directing the District Manager to suspend, reduce, or revoke the license, permit, or base property qualifications or to deny renewal, if the facts so warrant.

(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a wilful or wanton violation of any provision of this part or has repeatedly committed violations thereof, the State Director may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the District Manager may refuse to issue or renew a license or permit, or the State Director may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of this part or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary on any matter under this section shall be made in accordance with the applicable provisions of Sec. 161.10 and the rules of practice (Part 221 of this chapter).

Sec. 161.13 *Grazing District Advisory Boards---(a) Authorization for establishment; number of members; qualifications.* The State Director shall fix the number of members to be elected for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be elective but shall be appointed directly by the State Director. The State Director may fix the number of district advisers to be elected as representatives of each class of stockmen, according to the kind of livestock owned, or may fix the number to be elected from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts an adviser representing a precinct shall qualify in the precinct in the same manner as in the District.

(b) *Election; time and place; the general procedures.* All district advisers, except wildlife representatives, shall be elected in the manner provided in this section, and in the General Procedures for Grazing

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(b) *Election; time and place; the general procedures.* All district advisers, except wildlife representatives, shall be elected in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management, and published in the FEDERAL REGISTER. An election of district advisers for each grazing district will be held within 90 days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Thereafter elections shall be held annually by actual polling or by mail, in accordance with the options in the General Procedures for Grazing District Advisory Board Elections.

(c) *Appointment; term of office; removal; vacancies.* Upon receipt of the judges' certificate of returns after conclusion of the election procedure the district manager shall notify the State Director of the results thereof. A person elected as district adviser shall assume office only after he has been appointed by the State Director and has taken the oath of office. Such person shall serve for the fiscal year for which he has been elected. The State Director may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of a district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the district manager, shall be transmitted to the State Director for consideration. A person appointed to fill a vacancy shall hold office for the remainder of the unexpired term. The wildlife representative will be appointed by the State Director for a term of office that does not exceed a fiscal year.

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office, or in the public interest. Upon a vacancy occurring in the office of a district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the District Manager, shall be transmitted to the State Director for consideration. A person appointed to fill a vacancy shall hold office until the next regular election. The wildlife representative shall hold office for a term of three years and until a successor is appointed by the State Director.

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(d) *Meetings; organization.* District advisory boards shall meet at any time and place within or near the district designated by the State Director or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licenses or permits or any other business.

(e) *Functions and duties of district advisers; limitations.* District advisers shall advise or make recommendations on the following matters:

(1) The qualifications, classification, and requirements of base property.

(2) The transfer and relinquishment of base property qualifications.

(3) The grazing capacity of the Federal range in the district.

(4) Applications for all types of grazing licenses or permits, including nonuse, or extension of use, except applications of district advisers.

(5) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(6) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of this part.

(7) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(8) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(9) Proper rules of fair range practice.

(10) Allotments of range by classes of livestock or for community or individual use.

(11) Seasonal use of the Federal range or any part thereof.

(12) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(13) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(14) Any recommendations made by local associations of stockmen in the district.

(15) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(16) Special rules for the district, within the meaning of Sec. 161.16.

(17) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

(f) *State Advisory Boards.* The livestock members of each grazing district advisory board shall select from their number at the first meeting of the board after each election, two members and two alternates to serve on a State advisory board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State will select one of their number and one alternate to serve as a wildlife member on the State advisory board. In addition, the State advisory board will graph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of this part or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary on any matter under this section shall be made in accordance with the applicable provisions of Sec. 161.10 and the rules of practice (Part 221 of this chapter).

Sec. 161.13 *Grazing District Advisory Boards*---(a) *Authorization for establishment; number of members; qualifications.* The State Director shall fix the number of members to be elected for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be elective but shall be appointed directly by the State Director. The State Director may fix the number of district advisers to be elected as representatives of each class of stockmen, according to the kind of livestock owned, or may fix the number to be elected from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts an adviser representing a precinct shall qualify in the precinct in the same manner as in the District.

(b) *Election; time and place; the general procedures.* All district advisers, except wildlife representatives, shall be elected in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management and published in the FEDERAL REGISTER. An election of district advisers for each grazing district will be held within ninety days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons elected as advisers at the first election of the new district may hold office for a three-year term, or the District Manager may divide the group, by lot, as evenly as may be, into three classes to serve for one year, two years, or three years respectively, and until their successors are elected and have qualified. Thereafter in such new district and in existing district, the District Manager, after recommendation by the advisory board, shall determine whether elections shall be held annually or every three years and whether by actual polling or by mail, in accordance with the options in the General Procedures for Grazing District Advisory Board Elections.

(c) *Appointment; term of office; removal; vacancies.* Upon receipt of the judges' certificate of returns after conclusion of the election procedure the District Manager shall notify the State Director of the results thereof. A person elected as district adviser shall assume office only after he has been appointed by the State Director and has taken the oath of office. Such person shall serve for the term for which he has been elected and until his successor is elected and has qualified. The State Director may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of a district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the District Manager, shall be

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transmitted to the State Director for consideration. A person appointed to fill a vacancy shall hold office until the next regular election. The wildlife representative shall hold office for a term of three years and until a successor is appointed by the State Director.

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(d) *Meetings; organization.* District advisory boards shall meet at any time and place within or near the district designated by the State Director or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licenses or permits or any other business.

(e) *Functions and duties of district advisers; limitations.* District advisers shall advise or make recommendations on the following matters:

(1) The qualifications, classification, and requirements of base property.

(2) The transfer and relinquishment of base property qualifications.

(3) The grazing capacity of the Federal range in the district.

(4) Applications for all types of grazing licenses or permits, including nonuse, or extension of use, except applications of district advisers.

(5) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(6) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of this part.

(7) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(8) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(9) Proper rules of fair range practice.

(10) Allotments of range by classes of livestock or for community or individual use.

(11) Seasonal use of the Federal range or any part thereof.

(12) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(13) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(14) Any recommendations made by local associations of stockmen in the district.

(15) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(16) Special rules for the district, within the meaning of Sec. 161.16.

(17) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

(f) *State Advisory Boards.* The livestock members of each grazing district advisory board shall select from their number at the first meeting of the board after each election, two members and two alternates to serve on a State advisory board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State will select one of their number and one alternate to serve as a wildlife member on the State advisory board. In addition, the State advisory board will have one or more additional members, but not exceeding seven, who will represent other interests such as forestry, minerals, soil conservation, outdoor recreation, urban and suburban development, county government, and State government. Such additional members and their alternates will be selected by the State Director from nominations made by State or local government officers or organizations reflecting nonlivestock interests in the management or disposition of public lands. The time and place for meetings of the State advisory board shall be set by the State Director. The board shall select from its members one member to be chairman of the board. The co-chairman of the board shall be the State Director.

(g) *National Advisory Board Council.* The livestock members of each State advisory board shall select from their number, at its first meeting of each new term, one member and one alternate representing cattle and horses, and one member and one alternate representing sheep and goats, to serve on the National Advisory Board Council. The elected wildlife member or his alternate on each State advisory board will serve on the National Advisory Board Council representing wildlife interests. The State Director from each of the ten Western States with organized grazing districts shall submit a list of nominees, selected from the nonlivestock and nonwildlife membership on the State board. From this list, and other sources as he may determine, the Secretary of the Interior or his authorized representative shall appoint members, not exceeding ten in number, to the National Advisory Board Council to represent nonlivestock and nonwildlife interests. In addition to the above membership, one member from each of the States of Alaska and Washington will be appointed by the Secretary of the Interior or his authorized representative from a list submitted by the respective State Directors pursuant to nominations made by State or local government officers or organizations reflecting interests in grazing or other uses of public lands. The Council shall select from its members one member to be chairman of the Council. The co-chairman of the Council shall be an official of the Department of the Interior appointed by the Secretary of the Interior who shall set the time and place for such meetings of the National Advisory Board Council.

(h) *Functions and duties of State advisory boards and National Advisory Board Council.* The State advisory boards shall consider and make recommendations on grazing, wildlife, forestry, outdoor recreation, minerals, soil conservation, urban and suburban development, and other resource administration policies or problems affecting the State as a whole. Simarly, the National Advisory Board Council shall consider and make recommendations on policies and problems of a national scope related to all natural resource use and management. The operations of the State boards and the National Council, including their meetings, shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

Sec. 161.14 *Local associations of stockmen*--(a) *Organization.* Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

(b) *Articles of incorporation; constitutions; by-laws.* Such associations shall be organized as corporations "not-for-profit", if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Director for approval before the association may be recognized by the Bureau. The bylaws of such associations need not be submitted but in any instance which they are in conflict with the provisions of this part or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

(c) *Powers.* Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(1) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(2) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district under permit issued by the Bureau.

(3) To act in an advisory capacity in the administration of the Federal range lying within the district.

(4) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes, contemplated by the act.

(5) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

(d) *Cooperative agreements for use of lands; obligation of licensees and permittees to share cost.* Whenever the grazing capacity of Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the District Manager after consideration of the recommendation of the association. The District Manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

Sec. 161.15 *Construction and maintenance of improvements on the Federal range*---(a) *Qualification of applicants for permits.* An applicant for a permit to construct or maintain improvements under section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must be qualified under Sec. 161.3(a).

(b) *Applications.* Applications for such permits shall be filed in triplicate with the District Manager on form 4-1115.

(c) *Appeals.* The District Manager will act on the application after reference to the advisory board and such action shall be final unless the applicant or any interested party appeals in accordance with Sec. 161.10.

(d) *Assignments.* Assignments of section 4 permits shall be filed with the District Manager in triplicate on the authorized form and shall not be effective until approved by the District Manager.

(e) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* Where an application shows that the applicant and the prior occupant have not agreed on the value of such improvements owned by the latter, the District Manager will promptly, at the applicant's expense, cause the prior occupant to be served either personally or by certified mail with a notice of the filing of the application, and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or if the prior occupant applies within thirty days from the date of service for an appearance before the District Manager, then in the light of such evidence as the applicant and the prior occupant may present in such appearance, the District Manager will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken in accordance with Sec. 161.10. Upon the failure of the prior occupant to show cause or to apply within thirty days for an appearance, the reasonable value of the improvements will be determined by the District Manager but shall be not less than the amount alleged by the applicant in his application, and the decision of the District Manager in such case shall be final. In any case when a decision has become final, payment by the applicant of the amount determined and a showing that the improvements are free of all encumbrances may be required prior to favorable action on the application for use of such improvements, and on any application for grazing privileges involving the use of such improvements.

(f) *Cooperative agreements.* A licensee or permittee may enter into a cooperative agreement with the District Manager for the construction and maintenance of range improvements on the Federal range. Failure of the licensee or permittee to comply with the terms of such an agreement within a reasonable time as allowed by the District Manager may result in cancellation of the license or permit as provided in Sec. 161.9(d).

(g) *Applications for lands containing range improvements; compensation; reservation.* Public lands embraced in a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, or other public land laws, as specified in Sec. 161.5(e).

(1) When the disposal application covers land upon which range improvements have been placed pursuant to a permit authorized under section 4 of the act, the owner thereof may be required to remove the improvements; or if the improvements are of a permanent nature, the land applicant may be required to agree in writing to compensate the licensee, permittee, or other owner of such improvements located on the lands applied for an amount to be mutually agreed upon, or, if the parties are unable to agree, then in the amount and within the time for payment as determined by the District Manager in accordance with the applicable procedure under paragraph (e) of this section.

(2)(i) When the disposal application covers public land upon which range improvements have been placed by the United States, or pursuant to a cooperative agreement heretofore or hereafter entered into between the Bureau and the licensee, permittee, and/or other cooperators, the disposal application will be referred by the land office manager to the District Manager for determination as to whether it may be allowed, notwithstanding such improvements, and, if so, whether with or without a reservation. If the application is to be allowed without a reservation of the improvements, the applicant may be required to agree in writing to compensate for the loss of such improvements in the amounts to be mutually agreed upon and payable separately to the Bureau and to the cooperators. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. In the event of disagreement, the District Manager shall determine the total amount of compensation due, as provided in paragraph (e) of this section, and the time for payment. Such amount shall then be payable separately to the Bureau and to the cooperators entitled thereto, in proportion to the amount or value of their respective contributions in money, material, or labor, to the total cost of the improvement, as made by them under the original cooperative agreement as specified by the District Manager.

(ii) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the District Manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Director and to the Secretary, in accordance with the rules of practice (Part 221 of this chapter).

(3) Under the act of July 9, 1942, as amended (43 U.S.C. sec. 315q), the holder of a grazing license or permit shall be compensated for the losses sustained by reason of cancellation of or prevention of use of authorized grazing privileges resulting from the use of lands embraced in such license or permit for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the Federal department or agency making such use. Such payment shall be deemed payment in full for such losses.

Sec. 161.16 *Special rules for grazing districts.* Whenever it appears to a State Director after considering the recommendation of the district advisory board that local conditions in any district make necessary the adoption of a special rule on any of the matters in this part in order better to achieve an administration consistent with the purposes of the act, he may, recommend such a rule, supported by a factual showing of its necessity, for the approval of the Director. Such rule, if approved, shall be published in the FEDERAL REGISTER.

Sec. 161.17 *Contributions for administration, protection, and improvement of public lands.* The District Manager may accept contributions under section 9 of the act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction in the States.

(a) Any individual, association, corporation, grazing district advisory board, State or local body or private group, may enter into an agreement with the District Manager with respect to such contribution. Where the contribution is to include money, the contributor should execute forms 4-1268 or 4-1269 as requested by the District Manager.

(b) Contributions may be conditioned upon their use for specific projects or in specific localities.

(c) Upon written request of the contributor, the District Manager may authorize refund of any amounts deposited in excess of the contributor's proper share of the expense incident to the purpose for which the contribution was made.

Sec. 161.18 *Pledge of licenses and permits as security for loans; application for extension of permit term by borrower-permittee.*

(a) A license or permit may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the licensee's or permittee's livestock operations. Before making a loan, a lending agency may obtain from the District Manager a written statement concerning the status of the grazing license or permit and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) A borrower-permittee desiring an extension of the term of his permit may file a request therefor, in writing, with the District Manager, setting forth the name of the lending agency, purpose and amount of loan, and the need for the extension of the permit term. When it appears that such extension will be in accordance with applicable law and regulation and not contrary to the public interest, the District Manager, in his discretion, may extend the permit for a period not to exceed 10 years from the date of the loan, subject to the rules and regulations then in force and to such additional terms and conditions as the District Manager may provide. The provisions of this paragraph shall not be applicable to grazing licenses which are issued annually on a temporary basis prior to the issuance of term permits.

(c) If the base property to which the grazing privileges on the Federal range covered by the pledged license or permit are attached as a grazing unit is acquired by the lending agency through foreclosure or otherwise, such agency, or purchasers, lessees, or occupants of the property authorized by such agency, if qualified, may apply to be recognized as the successor licensee, or permittee. If in selling the property the lending agency takes back a mortgage on the base property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files with the District Manager notice that it has made a loan and has accepted a grazing license or permit as security therefor in conformity with the provisions of this section, the District Manager as a matter of cooperation will keep such agency advised of any adverse action affecting the license or permit, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the District Manager or the Bureau or any of its employees.

Sec. 161.19 *Saving clause.* So far as practicable and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in Sec. 161.1(a), the provisions of sections 161.1 to 161.19 inclusive will not be applied to the prejudice of the position of anyone who on the date of approval of this part was the holder of a grazing license or permit or who on that date had pending an application therefor.

This Circular replaces Circulars 1948, 1969, 1988, 2010, 2045, 2046, 2058, 2070, 2071, and 2073.

INT.DUP.,D.C.62- 169

Part 160—Grazing Leases

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Sec. 160.1 *Statutory authority.* Section 15 of the act of June 28, 1934 (48 Stat. 1275), as amended, authorizes the Secretary of the Interior to lease for grazing purposes vacant, unappropriated, and unreserved public lands outside of established grazing districts in the continental United States only. Grazing leases for other public lands intermingled with the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant lands which are located west of the Cascade Mountain Range Divide, or in and west of Range 5 East, or west of Klamath Lakes and Link River in T's. 36 to 41 S., Rs. 6 to 9 E., inclusive, Willamette Meridian, Oregon, will be issued pursuant to and will be governed by the provisions of Part 115 of this chapter.

Sec. 160.2 *Definitions.* (a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "State Director" means the proper State Director, Bureau of [1] Land Management.

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[1] Where the lands applied for include the even-numbered sections within the limits of a railroad grant, even though in the aggregate such lands exceed 760 acres, each such section will be considered as an isolated or disconnected tract within the meaning of this provision. The difference between the higher preference right accorded under this paragraph and the preference accorded under paragraph (b) of this section is that the applicant is not required to demonstrate that the public lands are necessary for the proper use of the contiguous or cornering lands, except where there are conflicting applications of the same class of applicants.

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(d) "Manager" means manager of the proper land office. Where there is no land office, it means the Director, Bureau of Land Management.

(e) "Signing Officer" means the Government official who has been duly authorized to issue a grazing lease.

(f) "Field Office" means any office of the Bureau of Land Management, including the land office, near the lands applied for and in the State in which such lands are situated. If there is no land office or other field office in the State, it means the office of the Director Bureau of Land Management, Washington 25, D. C.

(g) "The act" means the act of June 28, 1934 (48 Stat. 1269), as amended.

Sec. 160.3 *Classes of applicants; preference rights.* The act, as amended, provides for the issuance of grazing leases to classes of applicants in the following order:

(a) Preference-right leases to applicants who are the owners, homesteaders, lessees, or other lawful occupants of lands contiguous to or cornering on an isolated or disconnected tract embracing 760 acres or less for the whole of such tract, upon the terms and conditions prescribed by the Secretary, provided the preference-right is asserted during a period of 90 days after such tract is offered for leases.[2]

(b) Preference-right leases to applicants who are owners, homesteaders, lessees, or other lawful occupants of contiguous lands to the extent necessary to permit the proper use of such contiguous lands.

(c) Leases where no preference-right applicant is involved.

Sec. 160.4 *Qualifications of applicants.* An applicant for a grazing lease is qualified if the applicant

(a) Is a citizen of the United States, or

(b) Has filed a declaration of intention to become a citizen: *Provided,* that an applicant who has filed such declaration but has not filed a petition for naturalization before a court of competent jurisdiction within seven years from the date of filing the declaration or, having filed such petition, has failed to attain citizenship within a reasonable time thereafter and is unable to show any satisfactory reason for such failure, shall be disqualified to receive a grazing lease or any renewal of an existing lease until he has actually attained citizenship, or

(c) Is a group, association, or corporation which is authorized to conduct business under the laws of the State in which the lands applied for are located and the controlling interest in which is vested in a citizen or citizens or persons who would be qualified as individual applicants under paragraphs (a) and (b) of this section.

Sec. 160.5 *Application and lease.* (a) An application for lease shall be executed in triplicate on combined application and lease form (4–721) and filed in triplicate in any field office of the Bureau of Land Management in the state in which the lands applied for are situated.[3] The applicant's signature to the application shall be considered to be his signature to and his acceptance of the lease when executed by the signing officer, without prejudice to the applicant's right to appeal from the disallowance of his application as to any part of the lands applied for or from the issuance of a lease for a shorter term than that applied for.

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[2] By Departmental Notice of July 31, 1937, all vacant, unreserved and unappropriated public lands, exclusive of Alaska, not included in an established grazing district, were then offered for lease under section 15; all lands not then subject to lease under section 15 because of their appropriation or reservation, were offered for lease as of the date any such lands first became subject to lease.

[3] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

(b) A filing fee of $10 will be charged for each grazing lease application, including an application arising out of the assignment of leased lands, when it embraces in whole or in part lands which are not already under lease by the applicant or by the assignor on the date of filing such application.

Sec. 160.6 *No right conferred by application, prior to lease.* The filing of an application will not segregate the land applied for from application by other persons for a grazing lease or from other disposition under the public land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for pending the issuance of a lease. Any such unauthorized use constitutes a trespass.

Sec. 160.7 *Protests.* Protests against the the approval of an application for a lease should be filed in the same manner and number of copies as applications for a grazing lease, contain a complete disclosure of all facts upon which the protest is based, and describe the lands involved in such protests and should be accompanied by evidence of service of a copy of the protest on the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protest is filed, the protest should also be accompanied by an application for a grazing lease.

Sec. 160.8 *Leases of withdrawn or reserved lands; preference right leases for lands restored from withdrawal.* (a) The signing officer may issue leases for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[4] if the use of the land for grazing is not inconsistent with the purposes of the withdrawal. Lands included in stock driveway and public water reserve withdrawals may be leased in accordance with the sec. 295.7 (c) of this chapter. Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed for the protection and use of the land for the purpose for which it was withdrawn or reserved.

(b) Where public lands are restored from a withdrawal and the signing officer determines that a grazing lease for the lands may be issued, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the land immediately prior to their restoration, shall have a superior preference right to lease the restored lands previously used by him. The preference right must be asserted and an application for lease on combined application and lease form 4-721 (see sec. 160.5) must be filed not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The new lease will be dated as of the first day following the end of such current lease year, or as of the date of its issuance, in the discretion of the signing officer and for such term as he may determine.

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[4] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of February 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with principles of section 15 leases, under authority of subsection (I) of section 4, act of December 5, 1924 (43 Stat. 703, 43 U. S. C. sec. 501). Those lands withdrawn for reclamation purposes which are not subject to the Cooperative Agreement of February 28, 1945, will, upon restoration from the reclamation withdrawal become subject to the provisions of paragraph (b) of this section.

Sec. 160.9 *Action on defective application or where the lands applied for are not subject to grazing leasing.* Upon the filing of any application, the officer receiving it may require any defects in the application to be cured or additional information to be provided. The signing officer may reject any application if the applicant fails to cure defects in the application within the time allowed, which period shall not be less than thirty days from the date of receipt of notice of such defects by the applicant. If the application must be rejected because of the status of the land for which application is made as where land is in an allowed entry, otherwise appropriated or reserved and not subject to lease under the act, or not public land, a manager, if his office has land status, or a signing officer shall reject the application.

Sec. 160.10 *Disposition of protests and conflicting applications.* (a) The lease will be executed by the signing officer and transmitted to the lessee only after final action is taken on any protests or timely appeals which may have been filed. The lease will provide for an allowance of forage for wildlife, and within the discretion of the signing officer the number of livestock to be grazed, proper grazing season or reservations for authorized trailing across the land, and will contain the standard provisions set forth in the combined application and lease form, together with any other terms, conditions, or reservations which the signing officer in his discretion may deem necessary and proper.

(b) In those cases where more than one applicant applies for the same land and where it appears that a division of the lands should be made, such conflicting applicants will be given an opportunity to agree to a division of the lands prior to a determination by the signing officer as to the disposition of such conflicting applications or division of the lands.

(c) After a division of the range has been made either by agreement between applicants which is acceptable to the signing officer or by determination of the signing officer where there is no acceptable agreement, any conflicting applications or protests filed subsequent thereto will be rejected.

Sec. 160.11 *Reduction in leased area; adjustment of grazing use to conform with changes in grazing capacity.* The leased area may be reduced if it is determined that such area is required for the protection of sources of water supply to communities, or for camping places, stock driveways, roads and trails, or town sites, or for feeding grounds near communities for the use of domestic livestock or near the slaughtering or shipping points for use of stock to be marketed or for other public purposes; the authorized grazing use may be adjusted to conform to changes in grazing capacity estimates. In the case of any such reduction or adjustment, a proportionate adjustment will be made in the rental for the lease years commencing subsequent to the notice of such reduction or adjustment.

Sec. 160.12 *Lease lands subject to disposition; compensation to lessee for loss of improvements.* (a) Lands embraced in a grazing lease are subject to disposition under the provisions of the Act of June 28, 1934 (48 Stat. 1272, 1274), as amended, or other public land laws. Before any application for such disposition is allowed, evidence must be furnished that the applicant has agreed to compensate the lessee and the United States for any grazing improvements placed on the lands under the authority of the lease, permit, or cooperative agreement in an amount and manner to be mutually agreed upon. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R. S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. If the parties are unable to agree as to the amount, manner, and time for compensation for such improvements, the amount, manner, and time shall be fixed by the authorized officer. The failure of the applicant to comply with the agreement or the conditions fixed by the authorized officer shall be just cause for cancellation of any right or interest in the lands acquired by the applicant by reason of the allowance of his application.

(b) Where part of the leased lands are disposed of as provided by this section, the subsequent annual rental charges will be reduced proportionately to reflect the loss of the lands from the leasehold Such reduced rentals shall apply to rentals for the lease years commencing subsequent to the notice of such reduction.

Sec. 160.13 *Access to leased lands; temporary closing of leased area.* (a) The issuance of a grazing lease does not alter or restrict the right of access across the leased lands by licensed hunters or fishermen or restrict their right to hunt and fish on such lands in accordance with the laws of the United States or of the state in which the lands are located, nor may the lessee interfere with such rights. Nor shall such lease restrict or limit prospecting, locating, developing, mining or patenting the mineral resources in the leased lands; miners, prospectors and mineral lessees of the United States and all other authorized persons shall be entitled to enter the leased lands.

(b) The State Director, in his discretion, may close temporarily to grazing portions of the leased lands whenever, because of depletion of the vegetal cover due to drought, epidemic, fire, or any other cause, such action is necessary to restore the forage on the range to its normal condition. Such temporary closing will not operate to exclude such lands from the lease.

Sec. 160.14 *Rentals, schedule of grazing fees; billing notices; effect of failure to pay.*

(a) The annual rental charge for the use of the leased land will be based on the number of acres under lease, the estimated grazing capacity in AUMs (animal unit months), and the rate per AUM indicated in the then-current schedule of grazing fees established by the Director, Bureau of Land Management. The schedule of grazing fees will be established and may be modified, revised, or amended as the Director may determine from time to time and notice thereof shall be published in the FEDERAL REGISTER. The schedule rate will be effective (1) immediately as to new leases issued after date of publication; (2) 30 days after publication as to existing leases, the rental period of which begins after the 30-day period. The minimum rental on a lease shall not be less than $1 per annum.

(b) Rental groups: (1) Where the rental charge for a new lease is $50 or less for the full term of the lease, the entire amount shall be paid in advance and the rental charges will not be revised during the term of the lease. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in sections 160.11 and 160.12;

(2) Where the rental for the entire lease term exceeds $50 and the rental for the first three-year period is $100 or less, the total amount for such three-year period shall be paid in advance. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in sections 160.11 and 160.12. Rental

charges may be revised at the end of each three-year period based on the grazing fee schedule then in effect. Billing notices will be issued prior to the termination of each three-year period and the rental is due and payable upon receipt of the billing notice;

(3) Where the amount of the rental charge for the first three-year period would exceed $100, the rental shall be charged and paid annually based on the then effective grazing fee schedule. A billing notice for the amount of such annual rental will be sent each lessee in advance and is due and payable upon receipt. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in sections 160.11 and 160.12.

(c) Effect of failure to pay: The first rental payment required under a proposed lease in accordance with this section shall be made within 10 days from receipt of the lease form; if not paid within such time the lease shall be null and void and of no effect and all rights of the proposed lessee thereunder or under the application upon which it is based shall be considered as terminated. Subsequent rental payments for succeeding lease periods as required by paragraph (b) (2) or (3) of this section are payable in advance. In any event, if such payment is not received in the proper office by the last day of the current lease period, or within 10 days of lessees' receipt of the billing notice, whichever is the later, then the lease shall be considered as cancelled and all rights thereunder terminated as of the end of such current lease period.

(d) No refund of rentals properly paid in accordance with the regulations in this part and the terms of the lease will be made because of a failure to use the grazing privileges granted by the lease, except that during periods of range depletion due to severe drouth or other natural causes or in case of a general epidemic of disease during the life of the lease the Director will in his discretion remit, refund, reduce in whole or in part, or postpone the payment of rentals for such period of depletion of general epidemic.

Sec. 160.15 *Term of lease.* A lease may be issued for a period of not more than 10 years. Renewals may be for periods of not more than 10 years, upon such terms and conditions as may then be prescribed.

Sec. 160.16 *Application for renewals.* An application for renewal of lease should be executed and filed in triplicate on the combined application and lease form (4–721) at least 90 days prior to the expiration of the lease. The application may also include a request for the consolidation of other outstanding grazing leases held by the lessee. Such application does not confer on the lessee any preference right to a renewal but will, however, authorize the exclusive grazing use of the lands by the lessee in accordance with the provisions of the lease pending final action on the application for renewal.

Sec. 160.17 *Construction and maintenance of improvements*--(a) *Permit required.* After the issuance of a lease, the lessee may fence the lands or any part thereof, develop water by wells, tanks, water holes, or otherwise, and make or construct other improvements for grazing or stock raising purposes, so long as such improvements do not impair the value of the lands or interfere with other uses: *Provided,* That a permit or cooperative agreement is obtained under the procedure set forth in this section. The lessee will be required to comply with the provisions of the laws of the state in which the leased lands are located with respect to the cost and maintenance of fences.

(b) *Applications for permits and cooperative agreements.* Applications for permits, cooperative agreements, or arrangements to construct and maintain range improvements shall set forth the location of such improvements by legal subdivision of the public land survey, the necessity, use, cost, and description of such improvements, item by item, shall designate the time and manner of their construction, the period of use, the method of operation, protection, repair, removal, or other disposition, and shall include any other pertinent information. When necessary to explain properly the improvements and matters connected therewith, the application shall be accompanied by a sketch of the improvements with specifications and a map showing the location of the improvements. Applications for a permit shall be made on Form 4–1115 and shall be filed in triplicate with the signing officer. Application for a cooperative agreement shall be made on Form 4–1119.

(c) *Action on the application.* Action will be taken on the application by the signing officer. If the application is approved, the signing officer will issue a permit or enter into a cooperative agreement for the construction and maintenance of the improvements which have been approved.

Sec. 160.18 *Removal of improvements.* (a) Upon the expiration of the lease or its earlier termination, the signing officer may in his discretion and upon written application filed by the lessee not more than 30 days after date of such expiration or termination, require a proposed subsequent lessee, prior to the execution of a new lease, to agree to compensate the lessee for any grazing improvements of a permanent nature that have been placed upon the leased lands under authority of a section 15 lease executed prior to November 4, 1948, or thereafter, under a permit issued under sec. 160.17(b). The amount of such compensation shall be determined in accordance with the procedure set forth in sec. 160.12. The failure of the subsequent lessee to pay the lessee in accordance with such agreement shall be just cause for cancellation of the subsequent lessee's lease.

(b) The lessee will be allowed three months from the date of expiration or termination of the lease within which to remove such improvements as are not disposed of in the manner set forth above; if not removed or otherwise disposed of within the said period such improvements shall become the property of the United States. No improvements may be removed at any time the lessee is in default with respect to the lease.

Sec. 160.19 *Cancellation.* Except as otherwise provided in sec. 160.14, if the lessee shall fail to comply with any of the provisions of the regulations in this part or of the lease or of any cooperative agreement (Form 4–1119) entered into with the Bureau of Land Management for the benefit of the lease, and such default shall continue for 30 days after service of written notice thereof, or if the lease was issued improperly through error with respect to a material fact or facts, the lease may be terminated and cancelled by the authorized officer.

Sec. 160.20 *Inspection of leased premises.* The land described in the lease shall be subject to inspection at all reasonable times by duly authorized representatives of the Department of the Interior. Other Federal agents, as well as game wardens, shall be permitted access to the lands in connection with necessary official business.

Sec. 160.21 *Assignment of lease; subleases.* No part of the leased lands may be subleased. The lessee may assign the lease only with the consent of the signing officer. The proposed assignment must be filed with the signing officer within 90 days from date of its execution, and shall contain all the terms and conditions agreed upon between the parties, and the assignee's agreement to be bound by the terms of the lease, together with triplicate copies of the combined application and lease form (4–721) properly executed by the assignee, setting forth all the data required thereby. No assignment will be recognized nor will it confer on the assignee any rights to the leased area until a lease therefor is issued to him.

Sec. 160.22 *Pledge of leases as security for loans; applications for extension of lease by borrower-lessee.* (a) A lease may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may obtain from the authorized officer a written statement concerning the status of the grazing lease and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) An application by a borrower-lessee for an extension of the lease term should be executed and filed in triplicate on combined application and lease form (4–721). When it appears that such extension will be in accordance with applicable law and not contrary to the public interest, the signing officer in his discretion may extend the lease for a period not to exceed 10 years from the date of the loan, subject to such terms and conditions as are then provided by the regulations in this part, and by the signing officer.

(c) If the property of the lessee which was the basis for the granting of a preference right is acquired by the lending agency through foreclosure or otherwise, such agency or its occupants of the property or a purchaser of the property from the agency, if qualified, may apply on combined application and lease form (4–721) to be recognized as the new lessee. If, in selling the property, the lending agency takes back the mortgage on the property the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files in the office of the authorized officer notice that it has made a loan and has accepted a grazing lease as security therefor, in conformity with the provisions of this section, such agency will be advised of any adverse action taken affecting the lease, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the Bureau or any of its employees.

Sec. 160.23 *Appeals; filing.* An appeal from any decision rendered pursuant to sections 160.1 to 160.23, inclusive, may be taken to the Director and the Secretary, in accordance with the rules of practice (Part 221 of this chapter). The appeal should be filed with the officer who rendered the decision.

This Circular replaces Circular 2056.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

[Reprinted from Federal Register of December 18, 1958]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

GENERAL PROCEDURES FOR GRAZING DISTRICT ADVISORY BOARD ELECTIONS

DECEMBER 12, 1958.

Pursuant to the authority delegated to me by Order No. 2583 of August 16, 1950, of the Secretary of the Interior, and in accordance with the provisions of § 161.13 (b) of the Federal Range Code for Grazing Districts (43 CFR Part 161), notice is hereby given that the General Procedures for Grazing District Advisory Board Elections, as approved February 24, 1956 (21 F. R. 1371), are revised to read as indicated below. These procedures shall be followed for all advisory board elections, except wildlife representatives. The regulations governing appointment of advisory board members, oath and term of office, removal and vacancies, organization and duties of advisory boards, are published in 43 CFR 161.13.

A. *General*—1. *Number of members.* The State Supervisor, in accordance with § 161.13 (a) of the Federal Range Code for Grazing Districts, will fix the number of members to be elected to the district advisory board in each district in his State. He may fix the number of advisers to be elected to represent each class of stockmen (cattle or sheep) on a district-wide basis; or he may, where a district is divided into voting precincts, fix the number of representatives of each class to be elected in each such precinct; or he may fix the number of one class to be elected on district basis and the other class on a precinct basis. Free use licensees in each district are entitled to one representative who shall be a free use licensee. The wildlife representative for each district shall not be elected but shall be appointed directly by the State Supervisor (§ 161.13 (a) of the Federal Range Code for Grazing Districts).

2. *Qualifications of electors.* Only those persons (or their duly authorized representatives, as determined by the district manager) who are qualified to receive a regular or free use license or permit may vote in an election of advisers to represent their particular class, i. e., cattle, sheep, or free use. Every district adviser, other than the wildlife representative, shall be an elector qualified to vote in the particular election. If the district is divided into precincts for voting purposes, the adviser, to represent a precinct, must qualify in that precinct in the same manner as in the district. In any new grazing district hereafter established embracing areas not previously within any district, the electors will be those stockmen who, prior to the establishment of the district, were regularly accustomed to use the Federal range within such areas. A minor may vote if otherwise qualified, except that upon request of his natural or legal guardian the ballot may be cast by the guardian in behalf of the minor.

3. *Judges; contest; tie vote.* The district manager or his representative in charge of an election will select three qualified electors to act as election judges for the district or precinct, as the case may be. The election judges will be furnished by the Bureau with a registration list of all electors qualified to vote in the district or in the precinct. No person whose name does not appear on such list shall be allowed to vote, except that any person claiming that his name has been erroneously omitted from the list may obtain and mark a ballot which will be held uncounted until the district manager shall have determined whether that person is entitled to vote. If the district manager determines the contestant is entitled to vote, his ballot shall be counted; if otherwise, the ballot shall be marked "Void." In case of a tie vote, the election judges, in the presence of the district manager or his representative, shall make a choice by lot, provided the tie candidates are given an opportunity to be then present in person or by their authorized representatives.

4. *Time and place of election; notice.* An election of district advisers for each new grazing district will be held within 90 days after the publication in the FEDERAL REGISTER of the order establishing the district. Thereafter, in such new district and in each existing district, the district manager, after recommendation by the advisory board, and in accordance with § 161.13 (b) of the Federal Range Code for Grazing Districts, shall determine whether elections shall be held annually or at three-year intervals. The district manager may divide a district into voting precincts and will designate a voting place within or near each district or precinct where necessary. The district manager shall give notice of the time and place or places, and manner of holding an election, in one or more newspapers of general circulation in the district, by posting in the office of the State Supervisor and of the district manager, and in such other public places as he may determine necessary to give the matter proper publicity. No election shall be held to be invalid for failure to give any of the foregoing notices unless it shall be established that there has been a failure to give substantial notice.

5. *Procedure after election.* Upon conclusion of the election and certification by the election judges, the persons elected as district advisers shall be notified, and the district manager shall proceed in accordance with § 161.13 (c) of the Federal Range Code for Grazing Districts.

B. *Optional election procedures.* The district manager, after recommendation by the advisory board, shall designate one of the following optional election procedures that shall be followed in the election in the grazing district.

OPTION I—NOMINATION AND VOTING IN PERSON

1. *Nomination; registration; ballots.* The electors shall gather at the time and place or places designated in the election notice. The electors then present may place in nomination the names of candidates for district adviser. Nomination for representative of a designated class, precinct, or both, as fixed by the State Supervisor under paragraph A. 1., above, shall be made only by an elector himself qualified to represent such class, precinct, or both, but ballots may be cast for any other person so qualified, whether nominated or not, by write-in vote. Free use electors may nominate a free use candidate only. No elector shall receive a ballot until he has signed the registration list. Before receiving a ballot any elector may be challenged by any other elector qualified in the district and thereupon the judges may require the challenged elector to answer such questions concerning his qualification to vote as may be necessary. Upon his failure or refusal to answer the questions satisfactorily, he shall not be permitted to register but he may,

upon request, receive and mark a ballot which shall remain uncounted until his right to vote has been determined in the manner provided in paragraph A. 3., above. Each candidate may designate a qualified elector as his representative to remain in the polling place during the casting and counting of votes and to act as challenger.

2. *Method of voting.* Voting shall be only by ballots cast personally by qualified electors, or their duly authorized representatives. Voting by proxy will not be permitted. Only one ballot may be cast by the holder or holders of any one license or permit, whether regular or free use, or by a qualified elector or electors controlling any one base property. An elector eligible only for a free use license may cast a ballot for one free use candidate only and for no other candidate. All other electors, regardless of the precincts in which they may reside or operate, or the number of licenses or permits issued to them in the district, shall cast one ballot each, listing the candidates of their choice, not exceeding the total number of candidates to be elected in the district or precinct, as representatives of the class of livestock owners to which the elector belongs; except that if he belongs to more than one class he shall vote only for the candidates of the class in which his operations predominate, on the basis of one cow or one horse being equivalent to five sheep or five goats. If a certain number are to be elected from each precinct, no ballot shall include more candidates for any one precinct than are to be elected therefrom.

3. *Closing polls; results; judges' certificate.* Polling places shall remain open on the day of election from 2 p. m. to 5 p. m., or until all electors present at 5 p. m. shall have voted, unless the district manager, after recommendation by the advisory board, has designated other hours. Upon the closing of the polls the judges shall count the votes and shall execute a certificate of returns showing the number of votes cast, the number of excess, unused, or spoiled ballots, and in words and figures the number of votes received by each candidate. The judges shall enclose and seal the certificate, ballots and registration list of voters in a suitable container and deliver it promptly to the Bureau representative in charge of the election.

OPTION II—NOMINATION IN PERSON, BALLOTING BY MAIL

1. *Nominations.* The electors shall assemble at the time and place designated in the notice of the nomination meeting or meetings if on a precinct basis. The district manager or his representative at each such meeting shall designate three qualified electors to act as nomination judges. The electors may select from the qualified electors of the district or precinct one or more candidates for each position to be filled. Candidates to represent a class of livestock ownership must be qualified in that class and within the district, and where appropriate within the precinct. The nominations shall be made only by electors themselves qualified as to that class and district, and where appropriate the precinct. Free use electors shall nominate only a free use candidate. The election judges, after nominations have been duly closed, shall certify to the district manager the names of all candidates selected at the nomination meeting of the district or precinct.

2. *Method of voting.* Within 15 days following the nomination meeting the district manager will prepare ballots listing the names of the qualified candidates, by class, providing adequate space for write-in candidates, and will mail the ballots with necessary instructions to each qualified elector.

3. *Results; judges' certificate.* The district manager shall appoint three qualified electors to serve as election judges for the district and to tally the votes. The ballots, duly voted, shall be returned to the district manager within the time allowed in the instructions.

The election judges will check the name of each elector returning a ballot against the registration list. The judges, in the presence of the district manager or his representative will then open and count the ballots and list the votes for each candidate by class and precinct, if appropriate. Upon conclusion of the counting the judges will execute the certificate of returns, enclose and seal the certificate, ballots and registration list in a suitable container, and deliver the same promptly to the district manager or his representative.

OPTION III—NOMINATION AND VOTING BY MAIL

1. *Nominations.* The district manager will notify each qualified elector named on the registration list, by mail at his address of record, of his opportunity to nominate qualified candidates to represent his class of livestock in his district or precinct, as fixed by the State Supervisor. A free use elector may nominate one free use licensee to represent that class in the district. Nominations shall be in letter form addressed to the district manager and shall be signed by an elector who is himself so qualified. Nominations will be received in the office of the district manager within the time specified in the notice. The election judges selected by the district manager will tabulate and certify to the district manager the nominations received.

2. *Method of voting.* Within 15 days thereafter the district manager will prepare and mail to each elector a ballot listing the candidates, by class, with adequate provision for write-in candidates.

3. *Results; judges' certificate.* The district manager shall appoint three qualified electors to serve as election judges for the district. The ballots, duly voted, shall be returned to the district manager within the time allowed in the instructions. The election judges shall check the name of each elector returning a ballot against the registration list, and in the presence of the district manager, or his representative, shall open and count the ballots and list the votes for each candidate. The judges shall then execute the certificate of returns, enclose and seal the certificate, ballots and registration list in a suitable container and deliver the same promptly to the district manager or his representative.

C. *Amendments.* These general procedures may be amended, modified, or supplemented by order of the Director, Bureau of Land Management, effective upon publication in the FEDERAL REGISTER.

EDWARD WOOZLEY,
Director.

[F. R. Doc. 58-10419; Filed, Dec. 17, 1958; 8:48 a. m.]

The Taylor Grazing Act

OF JUNE 28, 1934

With Amendments to September 1, 1955

March 3, 1849

United States Department of the Interior
Douglas McKay, *Secretary*

Bureau of Land Management
Edward Woozley, *Director*

Preface

The Taylor Grazing Act of June 28, 1934, as amended and supplemented, is the basic legislative authority governing the management and protection of the vacant public lands of the United States. Because of the broad powers it confers upon the Department of the Interior for the multiple-use management of natural resources, it is one of the major conservation laws of the Nation. Without departing from the original primary objectives and conservation policies, the Congress has from time to time amended the Act to keep it abreast with changing demands. This pamphlet, issued in response to popular request, includes amendments to September 1, 1955.

Additional information concerning the administration of the Act can be obtained from the field offices listed in the back of this pamphlet, or by writing the Director, Bureau of Land Management, Washington 25, D. C.

Edward Woozley

Director

THE TAYLOR
Grazing Act

[AS AMENDED AND SUPPLEMENTED]

An Act

To stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range, and for other purposes. Approved June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976), July 14, 1939 (53 Stat. 1002), July 30, 1947 (61 Stat. 630), August 6, 1947 (61 Stat. 790), June 19, 1948 (62 Stat. 533), and May 28, 1954 (68 Stat. 151).

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That in order to promote the highest use of the public lands pending its final disposal, the Secretary of the Interior is authorized, in his discretion, by order to establish grazing districts or additions thereto and/or to modify the boundaries thereof of vacant, unappropriated, and unreserved lands from any part of the public domain of the United States (exclusive of Alaska), which are not in national forests, national parks and monuments, Indian reservations, revested Oregon and California Railroad grant lands, or revested Coos Bay Wagon Road grant lands, and which in his opinion are chiefly valuable for grazing and raising forage crops: PROVIDED, That no lands withdrawn or reserved for any other purpose shall be included in any such district except with the approval of the head of the department having jurisdiction thereof. Nothing in this Act shall be construed in any way to diminish, restrict, or impair any right which has been heretofore or may be hereafter initiated under existing law validly affecting the public lands, and which is maintained pursuant to such law except as otherwise expressly provided in this Act, nor to affect any land heretofore or hereafter surveyed which, except for the provisions of this Act, would be a part of any grant to any State, nor as limiting or restricting the power or authority of any State as to matters within its jurisdiction. Whenever any grazing district is established pursuant to this Act, the Secretary shall grant to owners of land adjacent to such district, upon application of any such owner, such rights-of-way over the lands included in such district for stock-driving purposes as may be necessary for the convenient access by any such owner to marketing facilities or to lands not within such district owned by such person or upon which such person has stock-grazing rights. Neither this Act nor the Act of December 29, 1916 (39 Stat. 862; U. S. C., title 43, secs. 291 and following), commonly known as the "Stock Raising Homestead Act," shall be construed as limiting the authority or policy of Congress or the President to include in national forests public lands of the character described in section 24 of the Act of March 3, 1891 (26 Stat. 1103; U. S. C., title 16, sec. 471), as amended, for the purposes set forth in the Act of June 4, 1897 (30 Stat. 35; U. S. C., title 16, sec. 475), or such other purposes as Congress may specify. Before grazing districts are created in any State as herein provided, a hearing shall be held in the State, after public notice thereof shall have been given, at such location convenient for the attendance of State officials, and the settlers, residents, and livestock owners of the vicinity, as may be determined by the Secretary of the Interior. No such district shall be established until the expiration of ninety days after such notice shall have been given, nor until twenty days after such hearing shall be held: PROVIDED, HOWEVER, That the publication of such notice shall have the effect of withdrawing all public lands within the exterior boundary of such proposed grazing districts from all forms of entry or settlement. Nothing in this Act shall be construed as in any way altering or restricting the right to hunt or fish within a grazing district in accordance with the laws of the United States or of any State, or as vesting in any permittee any right whatsoever to interfere with hunting or fishing within a grazing district. (43 U. S. C., sec. 315)

Est. of District

Sec. 2. The Secretary of the Interior shall make provision for the protection, administration, regulation, and improvement of such grazing districts as may be created under the authority of the foregoing section, and he shall make such rules and regulations and establish such service, enter into such cooperative agreements, and do any and all things necessary to accomplish the purposes of this Act and to insure the objects of such grazing districts, namely, to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range; and the Secretary of the Interior is authorized to continue the study of erosion and flood control and to perform such work as may be necessary amply to protect and rehabilitate the areas subject to the

Basic Authority
of Sec'y of Interior

provisions of this Act, through such funds as may be made available for that purpose, and any willful violation of the provisions of this Act or of such rules and regulations thereunder after actual notice thereof shall be punishable by a fine of not more than $500. (43 U. S. C., sec. 315a)

SEC. 3. The Secretary of the Interior is authorized to issue or cause to be issued permits to graze livestock on such grazing districts to such bona fide settlers, residents, and other stock owners as under his rules and regulations are entitled to participate in the use of the range, upon the payment annually of reasonable fees in each case to be fixed or determined from time to time, and in fixing the amount of such fees the Secretary of the Interior shall take into account the extent to which such districts yield public benefits over and above those accruing to the users of the forage resources for livestock purposes. Such fees shall consist of a grazing fee for the use of the range, and a range-improvement fee which, when appropriated by the Congress, shall be available until expended solely for the construction, purchase, or maintenance of range improvements. Grazing permits shall be issued only to citizens of the United States or to those who have filed the necessary declarations of intention to become such, as required by the naturalization laws, and to groups, associations, or corporations authorized to conduct business under the laws of the State in which the grazing district is located. Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them, except that until July 1, 1935, no preference shall be given in the issuance of such permits to any such owner, occupant, or settler, whose rights were acquired between January 1, 1934, and December 31, 1934, both dates inclusive, except that no permittee complying with the rules and regulations laid down by the Secretary of the Interior shall be denied the renewal of such permit, if such denial will impair the value of the grazing unit of the permittee, when such unit is pledged as security for any bona fide loan. Such permits shall be for a period of not more than ten years, subject to the preference right of the permittees to renewal in the discretion of the Secretary of the Interior, who shall specify from time to time numbers of stock and seasons of use. During periods of range depletion due to severe drought or other natural causes, or in case of a general epidemic of disease, during the life of the permit, the Secretary of the Interior is authorized, in his discretion to remit, reduce, refund in whole or in part, or authorize postponement of payment of grazing fees for such depletion period so long as the emergency exists: PROVIDED FURTHER, That nothing in this Act shall be construed or administered in any way to diminish or impair any right to the possession and use of water for mining, agriculture, manufacturing, or other purposes which has heretofore vested or accrued under existing law validly affecting the public lands or which may be hereafter initiated or

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acquired and maintained in accordance with such law. So far as consistent with the purposes and provisions of this Act, grazing privileges recognized and acknowledged shall be adequately safeguarded, but the creation of a grazing district or the issuance of a permit pursuant to the provisions of this Act shall not create any right, title, interest, or estate in or to the lands. (43 U. S. C., sec. 315b)

Sec. 4. Fences, wells, reservoirs, and other improvements necessary to the care and management of the permitted livestock may be constructed on the public lands within such grazing districts under permit issued by the authority of the Secretary, or under such cooperative arrangement as the Secretary may approve. Permittees shall be required by the Secretary of the Interior to comply with the provisions of law of the State within which the grazing district is located with respect to the cost and maintenance of partition fences. No permit shall be issued which shall entitle the permittee to the use of such improvements constructed and owned by a prior occupant until the applicant has paid to such prior occupant the reasonable value of such improvements to be determined under rules and regulations of the Secretary of the Interior. The decision of the Secretary in such cases is to be final and conclusive. (43 U. S. C., sec. 315c)

free use

Sec. 5. The Secretary of the Interior shall permit, under regulations to be prescribed by him, the free grazing within such districts of livestock kept for domestic purposes; and provided that so far as authorized by existing law or laws hereinafter enacted, nothing herein contained shall prevent the use of timber, stone, gravel, clay, coal, and other deposits by miners, prospectors for mineral, bona fide settlers and residents, for firewood, fencing, buildings, mining, prospecting, and domestic purposes within areas subject to the provisions of this Act. (43 U. S. C., sec. 315d)

Sec. 6. Nothing herein contained shall restrict the acquisition, granting, or use of permits or rights-of-way within grazing districts under existing law; or ingress or egress over the public lands in such districts for all proper and lawful purposes; and nothing herein contained shall restrict prospecting, locating, developing, mining, entering, leasing, or patenting the mineral resources of such districts under law applicable thereto. (43 U. S. C., sec. 315e)

Sec. 7. The Secretary of the Interior is hereby authorized in his discretion, to examine and classify any lands withdrawn or reserved by Executive order of November 26, 1934 (numbered 6910), and amendments thereto, and Executive order of February 5, 1935 (numbered 6964), or within a grazing district, which are more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants, or more valuable or suitable for any other use than for the use provided for under this Act, or proper for acquisition in satisfaction of any outstanding lieu, exchange or script rights or land grant, and to open such lands to entry, selection, or location for disposal in accordance with such classification under applicable public-land laws, except that homestead entries shall not be allowed for tracts exceeding three hundred and twenty acres in area. Such lands shall not be subject to disposition, settlement, or occupation until after the same have been classified and opened to entry: PROVIDED, That locations and entries under the mining laws, including the Act of February 25, 1920, as amended, may be made upon such withdrawn and reserved areas without regard to classification and without restrictions or limitation by any provision of this Act. Where such lands are located within grazing districts reasonable notice shall be given by the Secretary of the Interior to any grazing permittee of such lands. The applicant, after his entry, selection, or location is allowed, shall be entitled to the possession and use of such lands: PROVIDED, That upon the application of any applicant qualified to make entry, selection, or location, under the public-land laws, filed in the land office of the proper district, the Secretary of the Interior shall cause any tract to be classified, and such application, if allowed by the Secretary of the Interior, shall entitle the applicant to a preference right to enter, select, or locate such lands if opened to entry as herein provided. (43 U. S. C., sec. 315f)

Sec. 8. (a) Where such action will promote the purposes of a district or facilitate the administration of the public lands, the Secretary is authorized to accept on behalf of the United States any lands within or without the exterior boundaries of a grazing district as a gift.

(b) When public interest will be benefited thereby the Secretary is authorized to accept on behalf of the United States title to any privately owned lands within or without the boundaries of a grazing district, and in exchange therefor to issue a patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than fifty miles within the adjoining State nearest the base lands.

(c) Upon application of any State to exchange lands within or without the boundaries of a grazing district the Secretary of the Interior shall, and is hereby, directed to proceed with such exchange at the earliest practicable date and to cooperate fully with the State to that end, but no State shall be permitted to select lieu lands in another State. The Secretary of the Interior shall accept on behalf of the United States title to any State-owned lands within or without the boundaries of a grazing district, and in exchange therefor issue patent to surveyed grazing district land not otherwise reserved or appropriated or unappropriated and unreserved surveyed public land; and in making such exchange the Secretary is authorized to patent to such State, land either of equal value or of equal acreage: PROVIDED, That no State shall select public lands in a grazing district in furtherance of any exchange unless the lands offered by the State in such exchange lie within such grazing district and the selected lands lie in a reasonably compact body which is so located as not to interfere with the administration or value of the remaining land in such district for grazing purposes as set forth in this Act.

When an exchange is based on lands of equal acreage and the selected lands are mineral in character, the patent thereto shall contain a reservation of all minerals to the United States; and in making exchanges of equal acreage the Secretary of the Interior is authorized to accept title to offered lands which are mineral in character, with a mineral reservation to the State.

For the purpose of effecting exchanges based on lands of equal acreage the identification and area of unsurveyed school sections may be determined by protraction or otherwise. The selection by the State of lands in lieu of any such protracted school sections shall be a waiver of all of its right to such sections.

(d) Before any such exchange under this section shall be effected, notice of the contemplated exchange, describing the lands involved, shall be published by the Secretary of the Interior once each week for four successive weeks in some newspaper of general circulation in the county or counties in which may be situated the lands to be accepted, and in the same manner in some like newspaper published in any county in which may be situated any lands to be given in such exchange; lands conveyed to the United States under this Act shall, upon acceptance of title, become public lands, and if located within the exterior boundaries of a grazing district they shall become a part of the district within the boundaries of which they are located: PROVIDED, That either party to an exchange based upon equal value under this section may make reservations of minerals, easements, or rights of use. Where reservations are made in lands conveyed either to or by the United States the right to enjoy them shall be subject to such reasonable conditions respecting ingress and egress and the use of the surface of the land as may be deemed necessary. Where mineral reservations are made by the grantor in lands conveyed by the United States, it shall be so stipulated in the patent, and any person who prospects for or acquires the right to mine and remove the reserved mineral deposits may enter and occupy so much of the surface as may be required for all purposes incident to the prospecting for, mining and removal of the minerals therefrom, and may mine and remove such minerals, upon payment to the owner of the surface for damages caused to the land and improvements thereon. No fee shall be charged for any exchange of land made under this Act except one-half of the cost of publishing notice of a proposed exchange as herein provided. (43 U.S.C., sec. 315g)

Sec. 9. The Secretary of the Interior shall provide, by suitable rules and regulations, for cooperation with local associations of stockmen, State land officials, and official State agencies engaged in conservation or propagation of wild life interested in the use of the grazing districts. The Secretary of the Interior shall provide by appropriate rules and regulations for local hearings on appeals from the decisions of the administrative officer in charge in a manner similar to the procedure in the land department. The Secretary of the Interior shall also be empowered to accept contributions toward the administration, protection, and improvement of lands within or without the exterior boundaries of a grazing district, moneys so received to be covered into the Treasury as a special fund, which is hereby appropriated and made available until expended, as the Secretary of the Interior may direct, for payment of expenses incident to said administration, protection, and improvement, and for refunds to depositors of amounts contributed by them in excess of their share of the cost. (43 U. S. C., sec. 315h)

SEC. 10. Except as provided in sections 9 and 11 hereof, all moneys received under the authority of this Act shall be deposited in the Treasury of the United States as miscellaneous receipts, but the following proportions of the moneys so received shall be distributed as follows: (a) 12½ per centum of the moneys collected as grazing fees under section 3 of this Act during any fiscal year shall be paid at the end thereof by the Secretary of the Treasury to the State in which the grazing districts producing such moneys are situated, to be expended as the State legislature of such State may prescribe for the benefit of the county or counties in which the grazing districts producing such moneys are situated: PROVIDED, That if any grazing district is in more than one State or county, the distributive share to each from the proceeds of said district shall be proportional to its area in said district; (b) 25 per centum of all moneys collected under section 15 of this Act during any fiscal year when appropriated by the Congress, shall be available until expended solely for the construction, purchase, or maintenance of range improvements; and 50 per centum of all moneys collected under section 15 of this Act during any fiscal year shall be paid at the end thereof by the Secretary of the Treasury to the State in which the lands producing such moneys are located, to be expended as the State legislature of such State may prescribe for the benefit of the county or counties in which the lands producing such moneys are located: PROVIDED, That if any leased tract is in more than one State or county, the distributive share to each from the proceeds of said leased tract shall be proportional to its area in said leased tract. (43 U. S. C., sec. 315i)

SEC. 11. That when appropriated by Congress, 33⅓ per centum of all grazing fees received from each grazing district on Indian lands ceded to the United States for disposition under the public-land laws during any fiscal year shall be paid at the end thereof by the Secretary of the Treasury to the State in which said lands are situated, to be expended as the State legislature may prescribe for the benefit of public schools and public roads of the county or counties in which such grazing lands are situated. And the remaining 66⅔ per centum of all grazing fees received from such grazing lands shall be deposited to the credit of the Indians pending final disposition under applicable laws, treaties, or agreements. The applicable public-land laws as to said Indian ceded lands within a district created under this Act shall continue in operation, except that each and every application for nonmineral title to said lands in a district created under this Act shall be allowed only if in the opinion of the Secretary of the

Interior the land is of the character suited to disposal through the Act under which application is made and such entry and disposal will not affect adversely the best public interest, but no settlement or occupation of such lands shall be permitted until ninety days after allowance of an application. (43 U. S. C., sec. 315j)

Sec. 12. That the Secretary of the Interior is hereby authorized to cooperate with any department of the Government in carrying out the purposes of this Act, and in the coordination of range administration, particularly where the same stock graze part time in a grazing district and part time in a national forest or other reservation. (43 U. S. C., sec. 315k)

Sec. 13. That the President of the United States is authorized to reserve by proclamation and place under national-forest administration in any State where national forests may be created or enlarged by Executive order any unappropriated public lands lying within watersheds forming a part of the national forests which, in his opinion, can best be administered in connection with existing national-forest administration units, and to place under the Interior Department administration any lands within national forests, principally valuable for grazing, which, in his opinion, can best be administered under the provisions of this Act: PROVIDED, That such reservations or transfers shall not interfere with legal rights, acquired under any public-land laws so long as such rights are legally maintained. Lands placed under the national-forest administration under the authority of this Act shall be subject to all the laws and regulations relating to national forests, and lands placed under the Interior Department administration shall be subject to all public-land laws and regulations applicable to grazing districts created under authority of this Act. Nothing in this section shall be construed so as to limit the powers of the President (relating to reorganizations in the Executive departments) granted by title 4 of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved March 3, 1933. (43 U. S. C., sec. 315 l)

Sec. 14. That section 2455 of the Revised Statutes, as amended, is amended to read as follows:

> "SEC. 2455. Notwithstanding the provisions of section 2357 of the Revised Statutes (U. S. C., title 43, sec. 678) and of the Act of August 30, 1890 (26 Stat. 391), it shall be lawful for the Secretary of the Interior to order into market and sell at public auction, at the land office of the district in which the land is situated for not less than the appraised value, any isolated or disconnected tract or parcel of the public domain not exceeding one thousand five hundred and twenty acres which, in his judgment, it would be proper to expose for sale after at least thirty days' notice by the land office of the district in which such land may be situated: PROVIDED, That for a period of not less than thirty days after the highest bid has been received, any owner or owners of contiguous land shall have a preference right to buy the offered lands at such highest bid price, and where two or more persons apply to exercise such preference right the Secretary of the Interior is authorized to make an equitable division of the land among such applicants, but

in no case shall the adjacent land owner or owners be required to pay more than three times the appraised price: PROVIDED FURTHER, That any legal subdivisions of the public land, not exceeding seven hundred and sixty acres, the greater part of which is mountainous or too rough for cultivation, may, in the discretion of the said Secretary, be ordered into the market and sold pursuant to this section upon the application of any person who owns land or holds a valid entry of lands adjoining such tract, regardless of the fact that such tract may not be isolated or disconnected within the meaning of this section: PROVIDED FURTHER, That this section shall not defeat any valid right which has already attached under any pending entry or location. The word 'person' in this section shall be deemed to include corporations, partnerships, and associations." (43 U. S. C. sec. 1171)

Sec. 15. The Secretary of the Interior is further authorized, in his discretion, where vacant, unappropriated, and unreserved lands of the public domain are so situated as not to justify their inclusion in any grazing district to be established pursuant to this Act, to lease any such lands for grazing purposes, upon such terms and conditions as the Secretary may prescribe: PROVIDED, That preference shall be given to owners, homesteaders, lessees, or other lawful occupants of contiguous lands to the extent necessary to permit proper use of such contiguous lands, except that when such isolated or disconnected tracts embrace seven hundred and sixty acres or less, the owners, homesteaders, lessees, or other lawful occupants of lands contiguous thereto or cornering thereon shall have a preference right to lease the whole of such tract, during a period of ninety days after such tract is offered for lease, upon the terms and conditions prescribed by the Secretary: PROVIDED FURTHER, That when public lands are restored from a withdrawal, the Secretary may grant an appropriate preference right for a grazing lease, license, or permit to users of the land for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to the time of their restoration. (43 U. S. C., sec. 315m)

Sec. 16. Nothing in this Act shall be construed as restricting the respective States from enforcing any and all statutes enacted for police regulation, nor shall the police power of the respective States be, by this Act, impaired or restricted, and all laws heretofore enacted by the respective States or any thereof, or that may hereafter be enacted as regards public health or public welfare, shall at all times be in full force and effect: PROVIDED, HOWEVER, That nothing in this section shall be construed as limiting or restricting the power and authority of the United States. (43 U. S. C., sec. 315n)

Sec. 17. Superseded by 1946 Reorganization Plan No. 3, sec. 403, effective July 16, 1946 (11 F. R. 7876, 60 Stat. 1100). (43 U. S. C., sec. 315o)

Sec. 18. (a) In order that the Secretary of the Interior may have the benefit of the fullest information and advice concerning physical, economic, and other local conditions in the several grazing districts, there shall be an advisory board of local stockmen in each such district, the members of which shall be known as grazing district advisers. Each such board shall consist of not less than five nor more than twelve members, exclusive of wildlife representatives, one such representative to be appointed by the Secretary, in his discretion, to membership on each such board. Except for such wildlife representatives, the names of the members of each district advisory board shall be recommended to the Secretary by the users of the range in that district through an election conducted under rules and regulations prescribed by the Secretary. No grazing district adviser so recommended, however, shall assume office until he has been appointed by the Secretary and has taken an oath of office. The Secretary may, after due notice, remove any grazing district adviser from office if in his opinion such removal would be for the good of the service.

(b) Each district advisory board shall meet at least once annually at a time to be fixed by the Secretary of the Interior, or by such other officer to whom the Secretary may delegate the function of issuing grazing permits, and at such other times as its members may be called by such officer. Each board shall offer advice and make a recommendation on each application for such a grazing permit within its district: PROVIDED, That in no case shall any grazing district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested. Each board shall further offer advice or make recommendations concerning rules and regulations for the administration of this Act, the establishment of grazing districts and the modification of the boundaries thereof the seasons of use and carrying capacity of the range, and any other matters affecting the administration of this Act within the district. Except in a case where in the judgment of the Secretary an emergency shall exist, the Secretary shall request the advice of the advisory board in advance of the promulgation of any rules and regulations affecting the district. (43 U. S. C., sec. 315o–1)

An Act

To authorize the Secretary of the Interior to issue patents to States under the provisions of section 8 of the Act of June 28, 1934 (48 Stat. 1269), as amended by the Act of June 26, 1936 (49 Stat. 1976), subject to prior leases issued under section 15 of the said Act.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the Secretary of the Interior in adjudicating State exchanges, under section 8 of the Act of June 28, 1934 (48 Stat. 1269), as amended by the Act of June 26, 1936 (49 Stat. 1976), involving lands embraced in outstanding leases under section 15 of said Act issued prior to the filing of the State exchange application, is hereby authorized upon the request of any State to issue patent to the State, subject to such outstanding lease: PROVIDED, That the United States shall not by reason of the issuance of any such patents be required to account to the State for any money due and collected prior thereto as rent for any part of the then-current annual rental period except as is now provided by law. (43 U. S. C., sec. 315p)

Approved, August 24, 1937 (50 Stat. 748).

An Act

(THE PIERCE ACT)

To provide for the leasing of State, county, and privately owned lands for the purpose of furthering the orderly use, improvement and development of grazing districts.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the Secretary of the Interior in his discretion is authorized to lease at rates to be determined by him any State, county, or privately owned lands chiefly valuable for grazing purposes and lying within the exterior boundaries of a grazing district when, in his judgment, the leasing of such lands will promote the orderly use of the district and aid in conserving the forage resources of the public lands therein: PROVIDED, That no such leases shall run for a period of more than ten years and in no event shall the grazing fees paid the United States for the grazing privileges on any of the lands leased under the provisions of this section be less than the rental paid by the United States for any of such lands: PROVIDED FURTHER, That nothing in this section shall be construed as authorizing the appropriation of any moneys except that moneys heretofore or hereafter appropriated for construction, purchase, and maintenance of range improvements within grazing districts, pursuant to the provisions of sections 10 and 11 of the Act of June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976), may be made additionally available by Congress for the leasing of land under this Act.

SEC. 2. That the lands leased under this Act shall be administered under the provisions of the Act of June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976), commonly known as the Taylor Grazing Act.

SEC. 3. That contributions received by the Secretary of the Interior under section 9 of the Act of June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976), toward the administration, protection, and improvement of any district shall be additionally available for the leasing of lands under this Act.

SEC. 4. All moneys received by the Secretary of the Interior in the administration of leased lands as provided in section 2 of this Act shall be deposited in the Treasury of the United States as miscellaneous receipts, but are hereby made available, when appropriated by the

Congress, for the leasing of lands under this Act and shall not be distributed as provided under sections 10 and 11 of the Act of June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976). (43 U. S. C., sec. 315m–1)

Approved, June 23, 1938 (52 Stat. 1033).

An Act

Relating to the administration of grazing districts.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the Secretary of the Interior may require field employees of the Bureau of Land Management to furnish horses and miscellaneous equipment necessary for the performance of their official work and may provide at Government expense forage, care, and housing for such animals and equipment. (43 U. S. C., sec 315o–2)

Approved, December 18, 1942 (56 Stat. 1067); 1946 Reorganization Plan No. 3, sec. 403, effective July 16, 1946 (11 F. R. 7876, 60 Stat. 1100).

An Act

Authorizing the head of the department or agency using the public domain for national defense purposes to compensate holders of grazing permits and licenses for losses sustained by reason of such use of public lands for national defense purposes.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That whenever use for war or national defense purposes of the public domain or other property owned by or under the control of the United States prevents its use for grazing, persons holding grazing permits or licenses and persons whose grazing permits or licenses have been or will be cancelled because of such use shall be paid out of the funds appropriated or allocated for such project such amounts as the head of the department or agency so using the lands shall determine to be fair and reasonable for the losses suffered by such persons as a result of the use of such lands for war or national defense purposes. Such payments shall be deemed payment in full for such losses. Nothing herein contained shall be construed to create any liability not now existing against the United States. (43 U. S. C., sec. 315q)

Approved July 9, 1942 (56 Stat. 654) as amended May 28, 1948 (62 Stat. 277).

43 U. S. C., sec. 315r—In administering the provisions of sec. 315q (above), payments of rentals may be made in advance. October 29, 1949 Title III, sec. 301, (63 Stat. 996).

Range Management Offices of the Bureau of Land Management

AREA 1

Area Administrator,
1001 N. E. Lloyd Boulevard,
Portland 8, Oregon
(States of California, Oregon, Washington)

California

State Supervisor, 1010 4th Street, Sacramento, California

District No. 1, Bakersfield
District No. 2, Susanville

Oregon

State Supervisor, 1001 N. E. Lloyd Blvd., Portland 8, Oregon

District No. 1, Lakeview
District No. 2, Burns
District No. 3, Vale
District No. 5, Prineville
District No. 6–7, Baker

AREA 2

Area Administrator,
310 Boston Building,
Salt Lake City, Utah
(States of Arizona, Idaho, Nevada, Utah)

Arizona

State Supervisor, 233–A Main Post Office Building, Phoenix, Arizona

District No. 1, St. George (Utah)
District No. 2–3, Phoenix
District No. 4, Safford

Idaho

State Supervisor, 323 Federal Building, Boise, Idaho

District No. 1, Boise
District No. 2, Burley
District No. 3, Idaho Falls
District No. 4, Salmon
District No. 5, Shoshone

Nevada

State Supervisor, Reno, Nevada

District No. 1, Elko
District No. 2, Winnemucca
District No. 3, Carson City
District No. 4, Ely
District No. 5, Las Vegas
District No. 6, Battle Mountain

Utah

State Supervisor, 335 Federal Building, Salt Lake City, Utah

District No. 1, Brigham City
District No. 2, Murray
District No. 3–10, Fillmore
District No. 4, Cedar City
District No. 5, Richfield
District No. 6–9, Monticello
District No. 7, Price
District No. 8, Vernal
District No. 11, Kanab

AREA 3

Area Administrator,
Federal Center Building No. 53,
Denver, Colorado
(States of Colorado, Montana, New Mexico, Wyoming, Kansas, Nebraska, Oklahoma, North and South Dakota, Texas)

Colorado

State Supervisor, 357 New Customs Building, Denver 2, Colorado

District No. 1–6, Craig
District No. 2, Denver
District No. 3, Montrose
District No. 4, Durango
District No. 5–8, Canon City
District No. 7, Grand Junction

Montana

State Supervisor, 1245 N. 29th Street, Billings, Montana

District No. 1, Malta
District No. 2–3, Miles City
District No. 4–6, Lewistown
District No. 5, Dillon

New Mexico

State Supervisor, Post Office Building, Santa Fe, New Mexico

District No. 1, Albuquerque
District No. 2, Socorro
District No. 3–4, Las Cruces
District No. 6, Roswell
District No. 7, Farmington

Wyoming

State Supervisor, 305 Federal Building, Cheyenne, Wyoming

District No. 1, Worland
District No. 2, Lander
District No. 3, Rawlins
District No. 4, Rock Springs
District No. 5, Pinedale

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UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

TRESPASS HANDBOOK

For the use and guidance of employees of the Bureau of Land Management in the control of trespass on the public lands.

March 3, 1849

April 1950

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DEPARTMENT OF THE INTERIOR

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For the use and guidance of employees of the Bureau of Land Management in the control of trespass on the public lands.

March 3, 1849

April 1950

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FOREWORD

This handbook has been prepared to bring together in one place the more important matters concerning trespass on the public lands, to help officers of the Bureau, particularly those who are directly responsible for trespass control but who may not specialize in its problems. Policy, public relations, procedural, and legal matters are included. The handbook seeks to give an over-all-view of trespass control problems. It is not a confidential document.

The handbook does not replace any part of the BLM Manual nor take the place of any of the various orders, instructions, etc., pertaining to trespass control. It indicates successive steps to be taken in trespass problems. In many instances, further action will require the use of other documents or reference to other officers of the Bureau. Problems encountered in the field are extremely diverse. Particular situations may arise which are not adequately treated herein. In such cases, field officers should seek the advice of the Regional Administrator. Regional Counsels will determine the applicable State laws, and otherwise assist in trespass control. Each Region will develop a supplement including digests of State laws, regional orders, etc., pertinent to trespass matters within the region. Such supplements must not exceed the limits of properly delegated authority and must be confined to the broad principles and procedures set forth in this handbook.

The many constructive suggestions received from various offices throughout the Bureau are gratefully acknowledged. It has not been possible to incorporate all of the items as suggested. The most universally sought provisions that are omitted are dependent directly or indirectly upon the proposed uniform trespass damage bill. For example, the Department has no authority to compromise trespass damage claims, but the enactment of the bill in its present form would confer such authority. Revisions of the handbook will be required when the bill is enacted, and as Departmental Orders or statements of policy may require.

All officers of the Bureau are asked to continue to offer constructive suggestions to the end that procedures and policies may be improved and the handbook made more useful.

Marion Clawson

Director

TRESPASS MUSTS

1. Detection and control of trespass must be a perpetual objective of the Bureau.
2. Adequate records in each trespass case must be developed and maintained currently.
3. All levels of the Bureau organization must give vigorous support in each trespass case.
4. Proper lawful use of the public lands must be facilitated and assurance given to the lawful users that the resources for which they have obtained proper authorization will be protected.
5. The public must recognize that trespass is destructive of legitimate rights and that its control is of vital importance to public welfare.

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BUREAU OF LAND MANAGEMENT

TRESPASS HANDBOOK

PART I. INTRODUCTION

Trespass means violation of law or interference with the rights of others, exceeding the bounds of what is lawful, right, or just. Trespass upon the public lands includes all forms of unauthorized use as well as damaging or destructive acts, pilferage, and theft. Taking or using resources or values without authority or right constitutes trespass and results in depriving law-abiding persons of the resources or values. Trespass on the public lands concerns not only the Government but also all law-abiding citizens, because of the probable adverse effects upon their rightful use of public resources.

There are many kinds of trespass. There are also many differences in the degree of seriousness of trespass. The theft of a single Christmas tree, while much less important from the standpoint of value than deliberate non-permitted burning of a large grazing or timber area, is still an act of trespass. Shooting signs, cutting fences, squatting on public land, and pilferage, all are forms of trespass. Each one is in direct contravention of the basic principles of conservation and management. Each in itself is bad to the extent that resources are damaged, destroyed or misappropriated, and orderly use and management are disrupted. Each is bad too from the viewpoint that unauthorized use or other illegal action, if allowed to continue, destroys respect for the Bureau and its officers. Satisfactory resource management cannot be achieved without trespass control.

It is necessary to understand a little of the early history of policies and management of public domain resources in order to understand the relationships between trespass and the various legitimate uses or disposals.

The public-domain originated in 1781. Of the original 13 States, seven had western claims. The other six, fearing the power that their sister States might develop with the colonization and settlement of their western claims, conditioned their consent to the Articles of Confederation upon the promise that these claims would be ceded by the several State claimants, to become the common property of all.

Alexander Hamilton, Thomas Jefferson and other public figures of the day, faced with the necessity of liquidating a large public debt, conceived of the public domain as a source of important revenues for the new country. Consequently, by the Ordinance of 1785 and other laws, the disposal of lands for cash was authorized.

But the tide of western settlement was a dynamic force which proved to be stronger than the law enforcement efforts of the new Government. Administration of the early laws was not vigorously prosecuted.

The people recognized that there was an abundance of land. They struggled and fought their way to it, developed it, and sooner or later persuaded the Government to legalize their takings. Generation succeeded generation, yet vast areas of public lands remained and still remain. Children born and reared in the vicinity of these lands grew up with the generally accepted understanding that resources of the unentered public lands, in addition to those on valid entries, were theirs for the taking; that they were entitled to take timber, forage and minerals as a sort of unwritten recompense for their struggles and hardships in developing ranches, farms, mines, businesses and communities. Laws which were patently unenforceable were retained on the statute books. Some of these were defied, others subverted through graft and corrupt practices. Eventual legislative actions frequently forgave and legalized previously committed land grabs, resource depredations and unauthorized uses. For example, illegal fences were quite common prior to 1934. Pursuant to the provisions of the Taylor Grazing Act, most of these have been permitted legally to be maintained.

Sporadic attempts were made to legislate against trespass. One of the earliest Federal laws aimed (although obliquely) at trespass control was the Act of March 1, 1817, which authorized the reservation of timber tracts suitable for the production of live oak and red cedar in quantity to supply the United States Navy and provided penalties of fine and imprisonment for unauthorized removal of such timber from the public lands. Amending legislation was passed in 1820, 1822, and 1827.

By the Act of March 2, 1831 a system of timber agents was established under the supervision of the Solicitor of the Treasury Department. (The Bureau of Land Management, then the General Land Office, was in the Treasury Department until 1849). This system was discontinued in 1855 and the duties of the timber agents were imposed upon the registers and receivers of the district land offices. Depredations continued to be widespread and serious. Annual reports of the Commissioner, from as early as 1866, repeatedly emphasized the urgency of the problem.

By the Act of March 3, 1875 (18 Stat. 481), the Congress took cognizance not only of the large timber depredations but of certain forms of grazing trespass as well. This law tightened up existing timber trespass legislation and added penalties for driving livestock on the public lands, breaking or destroying fences, walls, hedges, etc. An important factor in the complex problems relating to trespass at that time was the fact that no specific statutory provisions existed for the lawful disposal of timber or of non-agricultural timber land. The following excerpt from the Commissioner's annual report of 1876 indicates his concern and his suggested solution:

> "It has been an object of solicitude to protect from depredations the valuable timber growing on the unappropriated public lands of the United States. The act of Congress of March 2, 1831 made it an offence punishable by fine and imprisonment to cut or remove the timber from the public lands without authority. The provisions of that act are now embodied in Section 2461 of the Revised Statutes of the United States.
>
> " * * * The recommendations made in the annual report of 1874 of the speedy offering and sale of the timber-bearing lands for the purpose of placing the timber under the protection of private guardianship is herewith renewed, as experience has shown that this is the only effectual way of preventing the waste of the timber which involves irreparable injury to the public."

It appears from the above and other annual reports that while the seriousness of trespass involving timber was recognized first, occupancy trespass was also common. The beginnings of this form of trespass, however, are obscured to some extent by the widespread existence of fraud in obtaining title to public lands and their resources. The above quotation and its reiteration by the Commissioner are believed to have been largely responsible for the passage of the Timber and Stone Act of 1878 and the Timber Cutting Act of the same year. The latter act was of relatively small consequence, but the Timber and Stone Act became a medium for the disposal of large areas of timber-bearing lands, ostensibly for settlement purposes. Over the years it became evident that the law was serving as a vehicle for the acquisition of large tracts of Federal timber by lumbermen and speculators. Even though recommended for repeal by the Commissioner in 1899, and repeatedly since, the Timber and Stone Act remains on the statute books today. The early development of the conservation movement is indicated by numerous acts, one of which was the Timber Culture Act of 1873.

Interest in stopping trespass on the unreserved public lands hit a high point in 1883 with the appointment of a new force of timber agents. They were not notably successful and this fact may have contributed to the development of the National Forests. The necessity for preserving timber for the national welfare led, in 1891, to the act which authorized the President to set aside timber producing areas of the public domain as forest reserves. Trespass within the reserved areas, now National Forests, became the concern of the Forest Service when that agency was formed in 1905.

Other milestones on the long road to resource management, where we in the Bureau of Land Management find ourselves today, include the Taylor Grazing Act of 1934, and numerous other statutes relating to the management and disposal of the public lands and their resources. The latest, and perhaps most significant event in the history of trespass control on the public lands, was decentralization of the activities of the Bureau, which has been in progress since 1948. Today, with decentralized authority to permit lawful uses within a reasonable time, there is no excuse for trespass.

This trespass handbook should contribute in a major way to stopping unauthorized uses of the public lands by putting inthe hands of each officer a ready reference to the statutes, regulations and procedures involved, as well as a statement of the policies of the Department and the Bureau in trespass control.

Appendices

Appendix A of this handbook includes pertinent orders and memoranda relating to trespass.

Appendix B includes copies of forms approved for use in trespass control procedure.

PART II. IMPORTANCE OF PUBLIC OPINION

The power of public opinion is well known. It is perhaps trite to say that without favorable public opinion trespass control cannot be achieved and with it, cannot fail. The difficulty, however, lies in the fact that for many years large segments of the public considered the public lands open to all manner of unrestricted use and abuse. They proceeded to trespass on these lands, often without punishment. No one was on hand to enforce the laws and regulations against trespass, and the general public condoned trespass on the public lands because "everyone else does it" and "who's going to stop me?" Those who filed proper applications under applicable laws and regulations often were deprived of legitimate rights as the result of trespass by others.

Decentralization of the activities of the Bureau and delegation of authority to field offices to take direct action on most public land applications has enabled the Bureau to initiate a planned management program. The program cannot be completely successful, however, until the public becomes aware that the public domain is being managed. Constructive management will receive the support of substantial, thinking people. Some well-chosen exemplary prosecutions for unauthorized use may be necessary. However, the development and adoption of methods for expeditious handling of applications will go far toward creating favorable public opinion. This is the way in which other management agencies have ultimately won out in their programs to reduce trespass. It is slow but relentlessly sure.

It is important to convince the public by word and by deed that the Bureau is a top-flight management agency whose major aim is to encourage and facilitate lawful proper use; and in instances where this fails to produce the desired results, to proceed with celerity and vigor to stop unauthorized uses and abuses and bring those in trespass to justice. In working toward these ends we must never forget, nor allow the public to forget that we are endeavoring in every possible way to facilitate the maximum legitimate use and enjoyment of the resources for whose management we are responsible.

Advisory boards are an important part of the administrative machinery of the Bureau, and should be used fully in dealing with trespass problems. District advisory boards exist not only for the Grazing Districts but in the O & C area as well, and in addition there are State and national boards. In addition to the boards, there are often local associations or groups of various kinds interested in the use of public lands. These boards and groups can be immensely helpful in dealing with trespass problems. In the first place, their members often have information which we do not have or can get only with difficulty. In the second place, these groups and boards can often help us formulate a constructive program for dealing with trespass. Finally, they represent an informed and usually influential segment of the public, whose understanding and support of Bureau policy and programs will be reflected in wider public appreciation. Trespassers must come to be regarded by the public for what they are -- bad neighbors, impinging upon the rights of their fellow citizens. We must particularly avoid actions which would align the local community with the trespasser, for this would encourage further trespass. A new attitude toward public land resources is needed. Instead of considering trespass as "all right" so long as one is not caught at it, the attitude should be that it is something which good citizens do not do. When our actions and our relations with the public have led to this attitude, trespass will no longer be the serious problem that it is today.

PART III. RESPONSIBILITY OF THE BUREAU AND ITS OFFICERS

Trespass control is not an end in itself. The real aim of the Bureau is proper management of the lands and resources under its jurisdiction. This requires establishment of facilities, procedures and policies which will result in fast, efficient and satisfactory service to all qualified applicants. Because trespass interferes with rendering efficient and satisfactory service, and with orderly management, it must be controlled. The Bureau has the responsibility also to see that trespass upon the public lands is not more profitable than lawful use.

Control, as here used, includes prevention of further trespass as well as the elimination of existing trespass. In theory, all trespass can be prevented by adequate management. There may be practical limitations to achieving this goal. Nevertheless officers of the Bureau are expected to concentrate on activities which will prevent new trespasses from being committed. To prevent trespass, it is first necessary to recognize the motives behind it. The greatest single preventive tool available is the facilitation of proper lawful use.

Every trespass should be investigated thoroughly, particularly each large-scale trespass. The major part of the energies of any unit should seldom be devoted to minor trespasses. Concerning occupancy trespasses and unauthorized uses of public lands, it is the policy of the Bureau to legalize wherever possible either the homesite or business use of the land, or other miscellaneous unauthorized use, as for example, rights-of-way.

Generally, intent plays a major role in all trespass cases. Intent affects the extent of a trespasser's liability for his unauthorized acts. Obviously it would be inequitable to assess identical damages for an unlawful act done deliberately or wilfully with actual knowledge of its unlawful character and for an unlawful act committed unintentionally, inadvertently, or as the result of a bona fide mistake of fact. As the determination of the wilfulness or innocence of the trespasser in committing the unauthorized act must be made from the factual data in the trespass report, it is apparent that such reports must be prepared very carefully and must contain all the pertinent facts. This does not mean that such reports must necessarily be verbose.

Wilful trespass must be dealt with vigorously, if we are to carry out our responsibilities in administration of the public lands. Field employees must be alert constantly for these major trespasses, and may wish to seek the assistance of the Regional office in dealing with them. Whenever any officer encounters a particularly difficult trespass problem he shall report it to the Regional Administrator and request his assistance. Complete and prompt support in the handling of such trespasses must be furnished at all levels within the organization.

Trespass control is the concern of all employees of the Bureau. Whenever any employee not specifically assigned to trespass control work discovers a trespass, as for example, employees of the Division of Engineering, it is their responsibility to report such trespass to the Regional Administrator who will assign the case to the appropriate officer.

PART IV. TRESPASS CONTROL PROCEDURE

A. GENERAL

Elimination of trespass must be a perpetual objective of any sound management program.

No matter how efficiently the Bureau may administer the public lands in the future, some cases of trespass are sure to occur, innocently or wilfully. Many trespasses have occurred in the past and are still continuing. A definite procedure for dealing with trespass is necessary. It should always be borne in mind that any trespass control action, however simple it may look at the beginning, may develop many complications, including possibly administrative appeals and even court action. A definite procedure, with close adherence to the major steps, will save much time and energy, as well as the possibility of reversal of action at some higher level. The most important matter in any trespass control action is the record on which the case must be built. Sometimes these are the records used in every day administration, sometimes they are special records made for an individual trespass action. In either event, too much stress cannot be laid on the necessity of having accurate records of all the important actions taken, including original notes by the investigator and complete signed statements by the trespasser and any available witnesses.

Sec. 231.1 of the BLM Manual provides that matters of trespass or possible trespass coming to the attention of employees shall be reported to the Regional Administrator. Departmental Order No. 2519 of May 19, 1949, requires field representatives of all departmental bureaus and offices to report promptly to the Regional Administrator all acts of trespass committed on public lands. It also requires employees of the Geological Survey to submit written reports of coal trespasses to the appropriate Regional Administrator.

Trespass is investigated, reported and payment demanded therefor, for these separate reasons:

1. As a deterrent to prevent commission of additional trespass by the same or other trespassers.
2. To recover damages to the Government.
3. In aggravated or malicious cases where voluntary payment is not obtained, to penalize the trespasser under civil or criminal law, with the added objective of preventing further injury.

Steps to be Taken in Handling Trespass Cases.

General procedure in handling any trespass case includes some or all of the following steps, depending upon the nature of the trespass and the circumstances of the case:

1. Ascertain the specific location of the land upon which the trespass is suspected.
2. Check the land status.
3. Serve notice of trespass (Form 4-1098), accompanied by copy of Form 4-620 for tender of payment of trespass obligation, and notice to trespasser to cease his trespass operations.
4. Determine the exact nature and extent of the trespass and the circumstances under which it was committed. The law frequently infers intent to commit the trespass in the absence of affirmative proof to the contrary. Accordingly, if the trespasser alleges that the trespass is non-wilful, he should be required to submit satisfactory evidence thereof.
5. Obtain signed statements from all persons having knowledge of the circumstances of the trespass.
6. Seize and post any materials severed or extracted but not yet removed from the area, or, if removed, which can be identified as Government property.
7. Determine the total amount of damages to be claimed under applicable law.
8. If possible, obtain tender of payment accompanied by payment in full of the amount due. The form should be completed to show whether the amount tendered may be applied against the total indebtedness found to exist. If payment is not made in full, the investigating officer should nevertheless request the trespasser to execute a Tender of Payment (Form 4-620), accompanied by a partial payment if possible, but in any case, accompanied by the trespasser's promise to make payment within specified time limits. Payments must be in the form of money orders, certified checks, or cashier's checks made payable to the Treasurer of the United States. Bureau officers who are not bonded are not authorized to accept cash in payment of trespass damages.
9. Prepare report of trespass in appropriate form. Special forms are provided as follows (samples printed in Appendix B):

   Form 4-730 - Coal Trespass Report
   Form 4-731 - Timber Trespass Report.
   Form 4-1143 - Grazing Trespass Report.

   Reports on other types of trespass will be made by memoranda. Include supplementary attachments setting out all the facts, together with recommendations for further action, if any.
10. If the material has been sold, the name and address of the purchaser should be ascertained as well as the amount paid by the purchaser in order that both the trespasser and purchaser may be held liable for damages.
11. In aggravated cases, where it is determined that an existing trespass is being continued, or that wilful trespass is to be committed in spite of foreknowledge of illegality, an injunction should be obtained against the trespasser, or his criminal prosecution recommended.
12. Dispose of the seized material.

Wilful and Non-Wilful Trespass.

Because the intent of the trespasser may affect the amount of damages recoverable, it is extremely important that all investigations of trespass arrive at a determination as to whether the trespass is wilful. Concise definitions of the terms "wilful" and "non-wilful" trespass are impractical for the reason that laws vary as to the presumption of wilfulness. Wilfulness or innocence of the trespasser in each case depends upon the circumstances of the case, including the intent of the trespasser. In many States a trespass is presumed to be wilful unless the trespasser shows that the act was committed casually or involuntarily. Moreover, the presumption of wilfulness of a trespasser, in absence of proof to the contrary was recognized in U.S. v. State of Wyoming and the Ohio Oil Co., 331 U.S. 440. (1947).

Court Action.

Every reasonable effort should be made to obtain a tender of payment covering civil liability. Resort to the courts will be taken only after every reasonable administrative effort has failed, or where an important far-reaching principle must be sustained. In accordance with advice from the Department of Justice as set out in the Chief Counsel's memorandum of May 23, 1947 to the Director, (Appendix A), damages will not include administrative expenses involved in the discovery, investigation or proof of a trespass.

It is important for the investigating officer to remember that acceptance by the Government of payment for civil liability does not preclude criminal prosecution if such is warranted. At the same time it should be remembered that Bureau policy aims, primarily, at the control of trespass and compensation for damages sustained. Vengefulness, or personal or official animus should never be a factor in the handling of a trespass case, nor should unduly harsh penalties be imposed upon a trespasser simply because circumstances permit. In other words, even-handed justice is all that should be sought.

Local Court Action.

When a Bureau officer discovers the commission of minor offenses which are not criminal offenses under Federal law, such as dumping trash, he may seek the assistance of the local law enforcement agents, who may prosecute the offender in accordance with local laws in the local courts. Bureau officers should remember that, in such circumstances, they act in their individual capacities and any possible claim arising out of such complaints would be against them individually and not against the Government under the Federal Tort Claims Act.

Disposition of Moneys Received From Trespass.

All payments should be in the form of money orders, certified checks or cashier's checks made payable to the Treasurer of the United States. Any payments tendered to satisfy a trespass obligation will be deposited to Account 14F5875, Special Deposits, Suspense, Department of the Interior, pending final determination in the case by the Regional Administrator. Upon approval of a tender of payment and the official closing of a trespass case, the moneys received will be transferred to the appropriate account, for example: "Oregon and California Land - Grant Fund" or "Sale of Public Land and Materials."

Uncollectible Items.

If a trespasser is unable to respond in damages because of financial irresponsibility, or when trespass damages involve small amounts for the collection of which institution of suit would not be warranted, and voluntary payment cannot be obtained, the case record should be submitted to the Director, marked for the attention of the Accounts Section.

Withdrawn Lands.

Essentially all of the public lands in the continental United States, excluding Alaska, were withdrawn for classification by Executive Order No. 6910 of November 26, 1934 and Executive Order No. 6964 of February 5, 1935. Other lands in the States and Alaska have been withdrawn or reserved for specific Government purposes. Occupancy trespass on withdrawn lands which are under the jurisdiction of the Bureau should be handled in the same way as similar trespass on other public lands.

Whenever an officer of the Bureau of Land Management discovers a trespass on public lands which are administered by another agency he should report it promptly to that agency. Officers of the Bureau will, upon request, cooperate with such other agency to the greatest extent possible.

B. TIMBER TRESPASS

Timber trespass includes any unauthorized cutting, digging, removal or destruction of living or dead trees or parts of trees, or of forest products. Turpentine trespass is a special case. Injury or destruction by fire, for the purpose of this handbook, is considered fire trespass. (See Section C below). Timber trespass includes offenses of widely varying proportions. These may range from the theft of a single Christmas tree or the cutting of a few fence posts or sawlogs, to the operation of a complete business enterprise such as a small sawmill deriving the major part of its raw materials from trespass operations on the public lands. Only from a thorough examination of the circumstances surrounding the trespass can a determination be made as to the wilfulness of the trespasser.

Obviously the larger cases interfere most seriously with management and represent the greatest injury to the public interest. Field officers frequently must decide to proceed first against major offenders, postponing investigation and follow-up of lesser cases in which active cutting or removal has ceased. To the maximum possible extent, however, remedial action should be taken against all timber trespass, large or small, as soon as it is discovered.

Numerous cases of extensive trespass cutting occurred several years ago. Undoubtedly some of these may have remained undiscovered. Others may not have been investigated and handled expeditiously with the result that the cases have remained unclosed and the trespassers not brought to justice. It is imperative that any such cases coming to the attention of the area managers, be followed to completion as promptly as possible, before evidence and clues disappear, and witnesses and trespassers die or move away.

Examples of Timber Trespass Are:

(1) The injury or removal of timber or forest products from public lands without proper authority.

(2) The cutting or removal of reserved timber or forest products without authority.

(3) The cutting or removal of timber or forest products from an area other than that included under an authorization. In stumpage sales, area and boundaries are more significant than exact volume.

(4) The cutting or removal of timber or forest products in excess of amounts specified under free-use permit, timber sales contract, right-of-way permit, or other authorization.

(5) Selling or bartering timber or forest products obtained under a free-use permit.

(6) Injury or removal of timber or forest products purportedly included under an authorization but not marked or otherwise designated for removal.

No timber trespass may be condoned or legalized through the issuance of a retroactive permit.

The offenses indicated under parts (c) to (f) inclusive, above, also constitute, or may constitute, violations of the terms of permits or contracts. Injury of trees or forest products through negligent or deliberate use of fire constitutes a fire trespass. (See Section C).

It is impossible to foresee all the kinds of problems that may arise in timber trespass cases throughout the Bureau. Even if it were, this general treatise could not cover them all in detail. In any unusual situations the field officer should therefore obtain advice from the Regional Administrator.

Ascertainment of Specific Location.

A most important step in handling any timber trespass case is to determine accurately, the location of the land on which the trespass occurs. Suspected trespass may be found, upon thorough examination, to be wholly outside the limits of public lands. On the other hand, loggers or others who believe in good faith that they are operating on private lands may learn, when property lines are surveyed and marked, that they are in fact in trespass.

In all instances it is necessary for the investigating officer to determine the location of the land on which trespass is suspected. In so doing it is necessary to have reference to the established lines and corners of public land surveys if such exist. If public land survey lines and corners do not exist, the land must be located with reference to some other established monument or to a readily identifiable topographic feature.

In some cases, the discovery of a single corner monument, together with a map showing land status in the vicinity, is all that is required. In other cases, it may be necessary to run one or more compass lines for more definite determination of the position of the boundaries of the legal subdivisions involved. In case of doubt, however, and especially where it appears that considerable values are involved in the suspected trespass, the Regional Administrator should be requested to have the boundaries of the public lands in the area surveyed and marked on the ground. Careful notes should be made at the time and place of the examination so that anyone examining the record may determine exactly where the trespass did occur.

Determination of Land Status.

The land status must be verified from the official records, especially if there is any adverse claim asserted to the lands in question. There may be sufficient information available from local residents and from county records to indicate whether or not an adverse claim to the land exists.

The owner of a valid mining claim has the right to use as much of the timber on his claim as is reasonably necessary for use in the development of the claim. Sale of such timber, by the claim owner, or its use for other purposes constitutes a trespass, except where the removal of the timber reasonably in advance of mining operations is required for the development of the claim.

Service of Notice of Trespass.

Armed with definite knowledge that timber trespass is or has been in progress, the examining officer should issue, before witnesses if possible, Notice of Trespass, (Form 4-1098), upon the trespasser. The notice should be prepared in triplicate; the original, with a Tender of Payment form (4-620), attached, served upon the trespasser; one copy sent to the area office, and the third transmitted to the Regional Administrator. The notice should contain specific statements of:

1. The act or acts constituting the trespass.
2. Description of the public lands involved by legal subdivision, where surveyed. If unsurveyed, description by metes and bounds or by reference to readily identifiable monument or topographic features.
3. Notice to cease trespass if continuing.
4. Request for tender of payment.
5. Action to be taken if trespasser fails to comply with the notice and fails to tender payment within stated reasonable period of time.

The certificate of service on the reverse side of the form (4-1098), must be completed or the returned registry receipt must be attached to and made a part of the record.

Investigation of Trespass.

The **Timber Trespass Report** (Form 4-731), contains spaces for pertinent facts required in timber trespass investigations. This, however, constitutes little more than the minimum of information required. Successful handling of many trespass cases will require a great deal more information.

Confirmation of the exact location of the area on which the trespass occurs must be made on the ground. At the same time, the investigator should take general notes regarding topography and local conditions by which the area can be found again, if necessary, without re-running lines and hunting corners.

If the trespass is still in progress and the trespasser is present, or can be found, he should be questioned for the purpose of determining whether the trespass was deliberate. Even in those cases where it appears that the trespass was not wilful, the investigator should nevertheless try to find other persons who have knowledge of the circumstances and obtain signed statements from them. The investigator should try to find the foreman of the felling crew and learn from him what instructions were given to the crew, as to where to start and stop cutting. If the nature of the instructions clearly indicates that an honest effort was made to limit the cutting to areas on which cutting was authorized, the trespass may have been non-wilful. On the other hand, if only vague general instructions were given, the trespasser cannot be presumed to have exercised reasonable diligence to avoid trespass.

In cases where the trespasser readily acknowledges in writing his full liability, and agrees to pay the damages due the Government, elaborate investigations ordinarily are not necessary.

Conscientiousness and care always are required, however, in the preparation, at the scene, of written records of all findings of the investigator, including his conversations with the trespasser. As pointed out under "Signed Statements," every effort should be made to obtain from the trespasser, a signed statement indicating his acknowledgment or denial of the trespass and any expression reflecting intent.

An important part of every trespass investigation is the determination of kinds and amounts of materials taken in trespass. Count or measurement of trees, logs and products cut but not yet removed from the area, is relatively simple. Logs or bolts should be scaled. Trees that have not been bucked into logs may be scaled for the logs they contain. Piece products such as poles and piling should be measured in terms of linear feet, while smaller products such as posts, stulls, stubs for power poles, etc., should be counted.

In cases where materials have been removed from the area, the determination of amounts cut may be estimated on the basis of the best available evidence remaining on the ground. Stump-scaling may have to be used. In other cases, it will be possible through diligent inquiry to identify the purchaser of products removed from the land and from his records to ascertain quantities taken. As in all other phases of the investigation, careful notes, supported by signatures wherever possible, must be maintained. In the event of litigation the Government's case would be predicated on these data including details of the methods used in ascertaining the amounts of materials taken.

Investigation and written records should clearly show the extent to which property of the Government such as bridges, fences, or any other improvements have been damaged or destroyed, whether improvements have been constructed on the public lands by the trespasser, and any other facts bearing on the civil or criminal liability of the trespasser.

Signed Statements.

In the course of his investigation the officer should obtain signed and witnessed statements from the trespasser and from other persons who have definite knowledge of the circumstances of the trespass. In many instances such persons are loath to make statements about the conditions of the trespass, particularly when they are neighbors of the alleged trespasser, or residents of the same community or locality. Fear of reprisal by the accused in such circumstances may dominate their thinking to such an extent as to deter them from acting in the public interest.

When instances of this kind confront the investigating officer, tact and patience are requisite if any headway is to be made in obtaining statements regarding the trespass so that justice may be rendered. Witnesses should be convinced that unlawful or unauthorized severance or removal of timber or other products from the public lands of the United States is illegal and obnoxious, and that it is their duty as good citizens to act in the public interest and help to punish and prevent such depredations.

On the other hand, persons having knowledge of the facts of the trespass may be willing and, in fact, eager to make declarations which will aid the Government in its investigation of the trespass so that the guilty person may be identified.

Under no circumstances should the investigating officer disclose the identity of the witness nor the nature of his statement. The reason for this is obvious.

Seizure and Posting of Timber or Forest Products Taken in Trespass.

See Directors Memo 12/15/50 and P. 20221

Where a timber trespass is discovered before all the timber cut has been removed from the area, or where forest products manufactured from timber taken in trespass can be found and identified, such timber or forest products shall be seized in the name of the United States by the responsible BLM officer.

As in all phases of trespass control, judgment must be exercised in deciding when to seize materials in any stage of manufacture after their removal from the public lands. If acknowledgment is obtained that a part, but not all, of the products in question were taken in trespass, but such trespass products cannot be separately identified, no part of such products should be seized.

The action of seizure is official when public notice is posted on the seized materials (Form 4-1151). A copy of such notice should be served upon the trespasser, the purchaser, or both, in person if possible, otherwise by registered mail addressed to their residence or business address.

In any case in which the seizing officer has reason to believe that the seized materials may be removed by others without authority despite the posting, he shall cause such materials to be removed to a safe place for their protection pending final action in the trespass case.

Determination of Total Damages Due.

The total amount of damages due in timber trespass (including turpentine trespass) cases depends upon the provisions of applicable law. The measure of damages generally is that prescribed by the laws of the State in which the trespass is committed. If there is no State law governing such trespass the measure of damages is as set out in the General Trespass Regulations (43 CFR, Part 288.2), and Part V hereof.

If the measure of damages is to be based upon the stumpage value, such value must be determined by standard appraisal techniques as used in appraising timber for sale, if upon the value of the materials at the time and place of seizure, such value will be current market value of such materials in their then existing state of conversion.

Total damages must also include a reasonable amount for any other resources or property including improvements of the Government damaged, destroyed or removed in the course of, or incidental to, the trespass operation. Damage to scenic, watershed, wildlife and other indirect values are difficult to appraise in monetary terms. Actions for recovery of civil damages of this character may be entirely inadequate. For example, if timber which has been reserved as a scenic strip parallelling a highway is taken in trespass, civil damages based on the value of the timber cannot compensate for the loss to users of the highway. In such cases, criminal proceedings may offer the only logical method of treatment. If attempts are made to collect civil damages, the methods used in appraising these indirect values must be such as to stand up under close scrutiny in court.

Tender of Payment.

When the total amount of damages due under applicable law has been determined, the investigator should demand tender of payment (Form 4-620) from the trespasser. Simultaneous demand should also be made upon the purchaser if possible. As discussed under Part A "General", above, the form should be completed to show whether the amount tendered may be applied against the total indebtedness found to exist. If payment in full is not made, the investigating officer should nevertheless request that the trespasser or the purchaser, or both, execute a Tender of Payment Form, accompanied by a partial payment if possible, but in any case, accompanied by a signed promise to make payment within specified time limits.

Where tender of payment is not made on demand, the case should be referred to the Regional Administrator immediately with appropriate recommendations substantiated by complete statement of all facts, including the financial responsibility of all principals.

Preparation of Timber Trespass Report.

Accuracy and completeness of dates, names, addresses, and descriptive detail are mandatory in the preparation of the Timber Trespass Report (form 4-731), as these reports will be offered in evidence in the event of litigation. When it is impossible to give complete information, the reasons should be fully stated.

The following instructions should be adhered to closely in preparing reports:

1. List date of investigation.
2. State name of trespasser(s) in full with address. This is important because there may be two or more persons in the same locality with identical given names and surnames and the middle name, not initial, may be the only means of later positive identification.
   Where the trespass is committed by a partnership or corporation, state partnership or corporation name and place of business, as well as the address of each partner of a partnership, or of each officer of a corporation. Also give the manager or local superintendent's name and address.
3. Describe the lands involved in the trespass.
   (a) If unsurveyed, define the locality by streams and other natural features, distance and direction from nearest surveyed lands, towns, etc.
   (b) If surveyed, describe the respective tracts by legal land subdivisions as indicated in the following illustration: Township 10 North, Range 10 East, 5th Principal Meridian, Ouachita County, Arkansas, NW$\frac{1}{4}$NW$\frac{1}{4}$ of Section 4, and NE$\frac{1}{4}$NE$\frac{1}{4}$ of Section 5.
   (c) Describe briefly the character of the land, and whether vacant or reserved for any purpose.
   (d) A diagram should be attached to and made a part of the report. The tracts trespassed upon should be indicated on the diagram, with the ownership of contiguous lands stated. Streams and other natural features and roads or other cultural features should be drawn in as accurately as possible. The exact boundaries of the area from which the forest products were severed or removed in trespass also should be delineated on the diagram.
4. State amount and kind of timber severed or removed in the trespass. Amounts should be given in board feet, linear feet, cords, bolts, or other standard units of measurement. Kind should be stated by species.
5. Stumpage value should be given.
6. If forest products are in a stage of secondary manufacture, an accurate appraisal of their value should be stated as well as the exact state of conversion.

7. If timber has been seized, state date, place, name of seizing officer, amount, and present location; whether on area where cut, hauled to shipping point, at mill, or removed and disposed of.
8. If sale of timber has been made, state date of sale, quantity, price given or agreed upon, names and addresses of purchasers.
9. List all available reputable witnesses, their names and addresses, and attach copies of their signed statements. Statements should include what each witness will be able to testify to in court, being accurate as to date or dates upon which he saw severance, cutting or removal or other acts of trespass. Cutters and haulers or other employees of the trespasser should be used as witnesses whenever available. Testimony must be as to facts; mere opinion, inferences and hearsay evidence will not suffice.
10. State all facts to which the investigating officer will testify.
11. State alleged belief of trespasser as to his right to sever or remove timber or other forest products, if he alleges such a belief.
12. State all facts which would justify such a belief by a prudent person.
13. State all other pertinent facts specifically and thoroughly, which have a bearing on the trespass.
14. State all facts bearing on the financial responsibility of the trespasser.
15. State whether trespasser or purchaser has tendered payment and if so, upon what terms.
16. State comments and recommendations and reasons for conclusions reached.

Injunctions; Criminal Prosecution.

Injunctions should be sought, or criminal prosecution recommended, only in aggravated cases where the investigator determines that a trespass is being continued after the service of a notice of trespass, or that trespass is to be committed in spite of foreknowledge or warning of the illegality of the act.

All such cases must be reported promptly to the Regional Administrator, together with essential facts. The report should specifically point out the reasons for the recommendations made.

Disposal of Seized Materials. See Director's Memo. 12/15/56
Disposal of materials seized in trespass cases

~~Materials that have been seized may not be disposed of until the trespass case has been closed officially. The Government has the same right to possess, use, sell, or otherwise dispose of seized Government timber as it would have if trespass had not occurred.~~

In general, in cases of non-wilful trespass, and in cases of wilful trespass which are satisfactorily concluded without litigation, the seized timber may be turned over to the trespasser upon acceptance by the Government of payment for the damages claimed and official closing of the case. However, if the timber taken in trespass, theretofore had been reserved for use by the Government, such timber should be retained for Government use. Payment for civil damages cannot be taken in any case in which all the timber taken is seized and retained by the Government.

In cases in which court action sustains the Government, the seized timber should be retained by the Government for its own use or sold to the highest bidder at public auction or under sealed bid procedure. In no such case, however, shall the trespasser be considered a qualified bidder.

Applicable portions of the United States Code:

The following quoted parts of the U.S. Criminal Code provide specific penalties for timber and turpentine trespass.

18 U.S.C. Sec. 1852, Timber Removed, provides:

"Whoever cuts, or wantonly destroys, any timber growing on the public lands of the United States, or whoever removes any timber from said public lands, with intent to export or to dispose of the same,... shall be fined not more than $1,000 or imprisoned not more than one year, or both."

18 U.S.C. Sec. 1853, Trees Cut or Injured, provides:

"Whoever unlawfully cuts, or wantonly injures or destroys any tree growing, standing or being upon any land of the United States which, in pursuance of law, has been reserved or purchased by the United States for any public use, ... shall be fined not more than $1,000 or imprisoned not more than one year, or both."

18 U.S.C. Sec. 1854, Trees Boxed for Pitch or Turpentine, provides:

"Whoever cuts, chips, chops, or boxes any tree upon any lands belonging to the United States, or upon any lands covered by or embraced in any unperfected settlement, application, filing, entry, selection, or location made under any law of the United States, for the purpose of obtaining from such tree any pitch, turpentine, or other substance; or

"Whoever buys, trades for, or in any manner acquires any pitch, turpentine, or other substance, or any article or commodity made from any such pitch, turpentine, or other substance, with knowledge that the same has been so unlawfully obtained ...

"Shall be fined not more than $1,000 or imprisoned not more than one year, or both."

16 U.S.C. Secs. 605 and 606.

"Any person or persons who shall violate the provisions of Sections 604 and 605 of this title" (relating to unauthorized cutting or use of timber upon mineral lands in the States of Colorado, Nevada, New Mexico, Arizona, Utah, Wyoming, North Dakota, South Dakota, Idaho, Montana and all other mineral districts of the United States), "or any rules and regulations in pursuance thereof made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding $500, and to which may be added imprisonment for any term not exceeding six months."

C. FIRE TRESPASS

Fire trespass is one of the most serious forms of trespass because it can lead to the complete destruction of resources and serious loss of resource potentials.

Fire trespass results from man-caused fires which can be classified as: (1) Accidental or non-wilful and (2) incendiary or wilful fires:

Non-wilful Fires.

Accidental or non-wilful fires are those started by campers, smokers, tourists, loggers, debris and slash burners, railroads and others who may be well aware of the serious consequences of fire but who do not intentionally set fire to destroy property or other resources. In the case of campers, smokers, and tourists, fires are caused usually by carelessness and lack of knowledge of the hazards that exist. Railroad and logging fires sometimes result from using faulty machinery such as locomotives without adequate spark arresters, and sometimes from sparks generated by friction, etc. Debris and slash fires are those which spread beyond the area intended for burning due to inadequate precautions, unexpected changes in wind direction or velocity, or to over-anxiousness on the part of the operator to start slash burning before weather conditions are such as to permit safe burning. Standard provisions of timber sale contracts require observance of certain precautionary measures including stoppage of operations during periods of high fire danger.

While the resulting damage is comparable acre for acre with that of an incendiary fire, the trespasser probably will be willing to cooperate in concluding a case, by offering payment for the damages. However, the mere fact that a fire is accidental does not relieve the trespasser from liability for damages.

Wilful Fires.

Wilful or incendiary fires are set with the intention of destroying timber or other resources. Wilful fires include those resulting from negligence. Incendiary fires include those set by "Fire Bugs" who may have no reason other than to see fire burn. Examples of wilful fires are:

(1) Slash or debris burning without an authorization. Through neglect the fire escapes to Federal land.
(2) Burning vegetation without permit in the belief that the range will be improved for grazing.
(3) Setting fires with malicious intent to destroy property as a means of taking revenge upon the Government or upon an individual range user because of loss of range through disciplinary action, or for other reasons.

(4) Failure of operators of donkey engines, road machinery, small sawmills, etc. in the woods to observe restrictions imposed upon them by Federal and State laws.

Control of Fire Trespass.

Control of fire trespass requires a diligent fire prevention program followed by law enforcement in order to bring violators to justice, and to persuade others to be careful in the use of fire.

Officers of the Bureau should at all times try to promote friendly relationships with timber, range, and other users and residents in order to obtain their full support and cooperation in fire prevention. The value of such relationships will be reflected in all phases of the resource management program of the Bureau.

Law enforcement is the direct responsibility of the area manager and his assistants. It is important that the first Bureau officer to arrive at any fire be alert for any clues that indicate the cause of the fire. Early arrival at a fire in order to find the exact location of the starting point and to preserve any clues that may later get destroyed is very important. If several fires are burning in a row the chances are that they are of incendiary origin. If they have burned together before an officer arrives, this evidence is lost.

Investigation.

The investigating officer must always try to determine how the fire started, whether it was accidental or deliberate, and, if the latter, why the fire was started. He must try to obtain evidence satisfactory for use in court upon which to build a case for collection of damages.

Investigation Procedure:

(1) Determine ownership of the land.
(2) Try to determine where the fire started and the exact cause. This is very important in any incendiary fire. After the fire is reached and while still small, look for persons in the immediate vicinity, and, if possible, question them for knowledge of the cause.
(3) The immediate area around the starting point should be examined thoroughly for any possible evidence. Be careful not to destroy tracks that may provide a clue as to who started the fire. Take complete notes during the investigation. Be alert for any possible clues such as scraps of paper, cigarette butts, etc.
(4) Obtain statements from witnesses while the fire is menacing, if possible, in order to insure against inaccuracy or forgetfulness.
(5) Determine, if possible, the actions and whereabouts of any suspect before and after the fire. Any tracks that are found at the point of origin of the fire should be followed immediately

in an attempt to identify the person making them. Use every reasonable means to find and identify the suspect.

(6) In general collect all evidence possible to prove guilt beyond any reasonable doubt. An adequate case can be built up by obtaining complete information pertaining to the following items:
   (a) Name and address of person starting the fire.
   (b) What section or sections of the law were violated?
   (c) The location of the fire by legal subdivision.
   (d) As closely as possible, the time the fire started.
   (e) How the fire was started.
   (f) The reason for starting it.
   (g) Area burned and an estimate of damage done.

Report.

Make a full report. Individual fire report (Form 4-1089) should be completed. Attach a map of sufficient scale to show significant detail such as point of origin of the fire, land status, roads and trails, streams, and, if possible, the original cover types.

The amount and basis for determination of damages must be incorporated in the report. Damage charges should include:

(1) Value of timber burned.
(2) Commercial value of forage burned.
(3) Damage to public lands and other property of the United States.

Damage to property such as fences, corrals, water troughs, pumping equipment, etc., or to structures for erosion control, water spreading, etc., is ascertainable and the charges to be assessed against the trespasser can be determined accurately.

Action to Obtain Damages.

Know the laws, both Federal and State. Several sections of a law may have been violated. The easiest cases to substantiate are those resulting from violation of the terms of burning permits. Prompt action in obtaining payment for damages or in recommending the institution of suit is important because delay adversely affects the interests of the Government.

Tender of Payment:

Tender of Payment (Form 4-620) for all damages caused by the fire should be obtained from the trespasser.

Service of Notice of Trespass.

A notice of trespass should be served on the trespasser, in person if possible, by the area manager or his authorized representative. If personal service is not possible, the notice should be served by registered mail, (return receipt requested) addressed to the trespasser at his residence or place of business. The notice should contain:

(1) Citation of the act or acts constituting the violation.
(2) A statement of the provisions of the Federal or State law violated.
(3) A description of the lands by legal subdivision, if surveyed, or, if unsurveyed, by reference to such natural landmarks as will permit accurate identification.
(4) Request for tender of payment (Form 4-620).
(5) The allowance of a reasonable period of time within which to tender payment of the damages.
(6) The action that will be recommended in the event that the trespasser fails to comply with the terms of the notice.

The State and County law enforcement agents may be of considerable assistance in working up the evidence in any fire investigations.

Federal Laws Relating to Fire Trespass on Federal Lands.

18 U.S.C. Sec. 1855. Timber, set afire; Forage, set afire.

"Whoever, willfully and without authority, sets on fire any timber, underbrush, or grass or other inflammable material upon the public domain or upon any lands owned or leased by or under the partial, concurrent, or exclusive jurisdiction of the United States ... shall be fined not more than $5,000 or imprisoned not more than five years, or both." (Felony).

18 U.S.C. Sec. 1856. Fires left unattended and unextinguished.

"Whoever, having kindled or caused to be kindled, a fire in or near any forest, timber, or other inflammable material upon any lands owned, or controlled or leased by, or under the partial, concurrent, or exclusive jurisdiction of the United States ... without the consent of the United States, leaves said fire without totally extinguishing the same, or permits or suffers said fire to burn or spread beyond his control, or leaves or suffers said fire to burn unattended, shall be fined not more than $500 or imprisoned not more than six months or both." (Misdemeanor).

D. GRAZING TRESPASS

Generally speaking, grazing trespass represents overuse of forage on public lands, or use of such lands for grazing without authority. All livestock on the range without license, permit or lease, or during any specified non-grazing period, are in trespass.

The aim of grazing trespass control is to eliminate the unlawful or unauthorized grazing of livestock on stock driveways, in grazing districts, and on the public lands subject to lease under Section 15 of the Taylor Grazing Act, and any wilful violation of any provision of the Act, the Federal Range Code, or the Section 15 grazing lease regulations. The chief responsibility of the Bureau with respect to the lands subject to lease under Section 15 is to stop the grazing use made of the unleased lands. Grazing lessees are responsible generally for controlling grazing trespass on the leased lands. If a lessee does not comply with the regulations or the terms of the lease, the lease may be cancelled in accordance with 43 CFR 160.18.

The Regional Administrator is authorized to determine the liability for trespass on the public lands and demand and accept payment of the amount determined to be due. (BLM Order No. 411, January 24, 1950.) The Regional Administrator is also authorized to close non-wilful grazing trespass cases without demanding payment if the cases warrant such action. An example of this non-wilful type of case is one in which livestock have drifted onto an area, on which they are not licensed, through a washout in a fence line. Notice of trespass (Form 4-1098) should be served on the operator allowing him a reasonable period of time in which to remove his livestock. The circumstances of such a trespass are beyond the control of the operator and do not warrant requiring payment if the livestock are moved within the time specified in the notice. Complete records of such cases must be maintained in both the district and regional offices and each case must be closed officially.

Tenders of payment (Form 4-620) will not include administrative expenses involved in the discovery, investigation or proof of the trespass. (BLM Manual 231.9). If the Regional Administrator determines that a tender of payment of trespass obligation be accepted in satisfaction of the trespasser's civil liability, the amount accepted shall be sufficient to cover the value of the forage consumed and damage to the lands and any other property of the United States. The value of the forage consumed should be based generally on the prevailing commercial rate charged customarily in the locality, or other comparable geographical area, for similar forage.

It is the responsibility of the Regional Administrator to maintain complete and current records of all grazing trespass actions for his region. Each area manager shall maintain similar records for his area of responsibility. The past practice of submitting a copy of each accepted tender of payment (Form 4-620) to the Director's office is hereby discontinued. Some grazing district office records now include trespass notices issued in cases in which the livestock were removed or other trespass stopped, but the cases have not been closed by acceptance of tenders of payment, by court action or otherwise. These cases should be ferretted out and closed, and henceforth, each trespass notice issued must be followed by appropriate final action. Actions involving inter-regional or inter-district trespass require an exchange of all pertinent correspondence and reports to insure that each officer concerned has a complete record.

Section 8(d) of the Federal Range Code (43 CFR 161.8(d)) provides in part: "No license or permit shall be issued or renewed until payment of all amounts found to be due to the United States under the Federal Range Code has been made." Under BLM Order No. 411, it is no longer necessary for the Regional Administrator to transmit a tender of payment of trespass obligation for consideration by the Director, as set forth in 43 CFR 161.11(c). No license or permit will be issued or renewed until payment of any amount found to be due the United States, under this section, has been offered.

There are three general situations with respect to grazing trespass within grazing districts: (1) the ownership of the livestock is known and the owner has grazing permits or licenses for an appreciable amount of public range use; (2) the ownership of the livestock is known, but the owner of the livestock has no grazing license or permit, or has one for such a small amount of public range use that the possibility of its loss might not deter him from further trespass; and (3) the ownership of the livestock is not known. Trespass by unbranded horses is the chief instance of the third situation. It is obvious that the corrective measures must differ for these situations. The livestock owner who has a substantial grazing license or permit on the Federal range is generally willing to be cooperative in the control of trespass, and if he is not, the possibility of loss of part or all of his license or permit encourages his compliance. Obviously, in the second situation, trespass by livestock owned by persons without licenses or permits cannot be controlled in that manner. When the owner of the livestock is not known, or when no one owns them, it is obviously impossible to require an individual directly to control the trespass by such livestock. Some means must be found for dealing directly with the livestock. The proper procedures for these three situations are explored in more detail later in this section of the handbook.

Generally speaking, the responsibility for the control of trespass upon leased Section 15 grazing lands is the responsibility of the lessee. These lands are, for the most part, in rather small tracts and are often surrounded by or adjacent to the land owned by the lessee. One of the requirements of the lease is that he use the lands properly and avoid overuse. In some cases it is not practical to specify the amount or season of use of such lands, due to their isolated character, although authority for so doing is contained in the regulations. (43 CFR 160.10). If the lessee overuses or abuses these lands, appropriate action may be taken against him, including the cancellation of the lease.

Upon finding livestock grazing upon unleased land or other evidence of such unauthorized grazing use, although the land is subject to lease under Section 15 of the Taylor Act, application forms (4-721) should be given to the owner of the livestock together with a notice of trespass (Form 4-1098) and a tender of payment of trespass obligation (Form 4-620) should be obtained. The important thing is to establish written record of the existing trespass and to have the trespasser obtain a proper lease or eliminate the trespass use.

Investigation and reporting on trespass.

All trespass cases must be fully investigated and reported on Form 4-1143, Grazing Trespass Report. (Form 4-1143 replaced obsolete Form GrS-69.) In making an investigation the following points should be kept in mind:

The land on which the trespass is committed must be identified. Establish identification of the land from a survey corner or monument, if possible, and make a note of the markings on the corner or monument in a notebook, or other permanent field record, with a notation as to the character of the country where the corner is located, whether in a canyon, on a flat or a hillside, and such data as piles of rock by corners, size and species of bearing trees, etc. If the land is unsurveyed, indicate by streams and other natural objects, distance and direction from nearest surveyed lands, towns, etc. If it is impossible to locate a survey corner, so report, and indicate clearly and completely the identity of the lands. If the lands are within a mining district and mine workings or mining claim corners or monuments are observed on the area, make appropriate notes and report such observations under item No. 2 of the Grazing Trespass Report.

Unauthorized grazing on an unpatented mining claim constitutes a trespass.

The stock in trespass should be counted and tallied and the brands identified and checked with an official brand book or with a brand inspector in order to establish ownership of the particular brand, thus establishing ownership of the livestock. Draw a picture of the brand in a notebook or other permanent field record. Also draw a picture of the brand on Notice of Trespass, Form 4-1098. (Form 4-1098 replaced obsolete Form 1-193.) Show in the trespass notice what provisions of Section 10 of the Federal Range Code (43 CFR 161.10) or of the Section 15 grazing lease regulations (43 CFR Part 160) are being violated.

Section 8(b) of the Federal Range Code (43 CFR 161.8(b) providing for the assessment and collection for grazing licenses or permits, states in part:

> "All livestock six months of age or over and allowed on the Federal range will be counted, at any point of time during the grazing period, as a part of the total number for which a license or permit has been issued."

This provision clearly and forcefully implies that all livestock under six months of age which the grazing district licensee or permittee may run with his licensed or permitted stock shall not be counted and shall have free use of the range while grazing with the licensed or permitted stock.

In grazing district trespass cases which are to be submitted to the Department of Justice for action, it is necessary that the field men making counts of livestock incorporate in their reports a statement that the figures given do not include any livestock less than six months of age. Such a statement incorporated in the certificate of count (Form 4-1153) and signed by both the investigating officer and the owner or person in charge of the livestock should be sufficient.

If possible, obtain witnesses to the trespass and have the person who reported the trespass or other ranchers or users in the area accompany the officer making the examination. A signed statement should be obtained from each such witness setting forth the dates of his observations, the corner or corners that he observed, brands of the stock, the numbers counted or seen in trespass, and his opinion as to the damage that has been done to the range.

If a camera is available, take pictures of the identifying survey corners and, if possible, of some of the stock. If the range has been over-grazed, it might be well to take pictures of the depleted conditions of the range; if grazed out of season when the ground is very muddy and soft, pictures showing the damage caused by sinking of the animals' hoofs into the soft ground. If possible, interview the trespasser, his riders or herders and get statements from them. On interviews or talks with witnesses from whom written statements are not obtained, make sufficient notes in a notebook or other permanent field record as to the testimony to be expected from them in the event of court action.

Service of notice of trespass.

When it has been determined that a grazing trespass on the public lands has been or is being committed, or that any provision of the Taylor Grazing Act, the Federal Range Code, or of the regulations governing Section 15 grazing leases has been or is being violated, a notice of trespass (Form 4-1098) should be served immediately by the Range Manager or his authorized representative on the owner of the livestock, in person if present, or, if absent, on the rider or herder in charge of the livestock. Improper or unauthorized grazing use of a stock driveway constitutes a grazing trespass.

If personal service of the notice cannot be made, the notice should be served on the owner by registered mail, addressed to him at his residence or place of business. In either case, certificate of service must be made on a true copy of the notice (Form 4-1098, reverse side). Where it appears that a grazing trespass is continuing, notices of trespass should be served at regular intervals.

File M 85-

Contents of notice.

M
Trespass
Procedure

The notice must specifically set forth:
(1) The act or acts constituting the violation.
(2) A reference to the provision or provisions of the Taylor Grazing Act, Federal Range Code, particularly section 10 or Section 15 grazing lease regulations violated.
(3) The kind of livestock and number in trespass.
(4) The brand or other identification marks found on the livestock.
(5) In grazing district cases, a statement that only livestock six months of age or older are included in the count, if the owner is the holder of a license or permit.
(6) A description of the public lands by legal subdivisions, if surveyed, or, if unsurveyed, by reference to such natural landmarks as will clearly identify the lands.
(7) In grazing district cases, the allowance of a reasonable period of time after receipt of notice within which to remove the stock or show no violation of the act or rules. The number of days to be allowed in Section 15 grazing lease cases is specified in 43 CFR, Part 160.

(8) The action that may be taken in the event that the trespasser fails to observe the terms of the notice.

The certificate of service on the reverse side of Form 4-1098 must be completed or the returned registry receipt attached to and made a part of the record.

Attention to the necessity for closing each trespass case in which a notice of trespass has been served is repeated here for purposes of emphasizing the importance of following up all cases.

Tender of Payment. 3 copies to RO

In all cases demand should be made upon the trespasser for tender of payment (Form 4-620) of damages resulting from his trespass, in accordance with Section 11(c) of the Federal Range Code, or the Section 15 grazing lease regulations. (Form 4-620 replaced obsolete Forms 1-201, 1-264.)

The trespassers' liability shall include: (1) value of the forage consumed, and (2) damage to the public land and other property of the United States.

(1) Value of forage consumed. (B.L.M. Manual, 231.9). The value of the animal unit months of forage consumed should be based generally on the prevailing commercial rate charged customarily in the locality, or other comparable geographical area, for similar forage. For the trespass use of public land withdrawn for a stock driveway, the charge should be computed from the date of the stock driveway withdrawal if the use began prior thereto. If the use began subsequent to the withdrawal, the charge should be computed from the date the use began. For trespass on public lands subject to Section 15 grazing leases and not within a stock driveway, the charge should be computed from the date that the person so using such land is notified that his use is unauthorized and that the grazing use of public land is controlled by the Taylor Grazing Act and the regulations issued thereunder. For the purposes of computing damages for grazing trespass within grazing districts in keeping with BLM Manual, 231.9, (Bureau Order No. 392), the charge should be computed from the date of establishing or adding the lands to the grazing district if the use began prior thereto. If the use began subsequent to establishing or adding the lands to the grazing district, the charge should be computed from the date the use began.

Upon finding livestock grazing upon unleased land or other evidence of such unauthorized grazing use, although the land is subject to lease under Section 15 of the Taylor Act, application forms (4-721) should be given to the owner of the livestock together with a notice of trespass (Form 4-1098) and a tender of payment of trespass obligation (Form 4-620) should be obtained. The important thing is to establish written record of the existing trespass and to have the trespasser obtain a proper lease or eliminate the trespass use.

(2) Damage to property of the United States.

Any damage to Government property consisting of range facilities such as fences, corrals, reservoirs, water troughs, pumping equipment, erosion-control structures, etc., is readily ascertainable, and the amount of damage to be assessed against the trespasser can be definitely and clearly determined. The amount of damage should be based on the cost of repair or replacement of such structures. The basis for this determination must be incorporated in the report. The computation of damages may include a reasonable charge for the amount of developed water consumed by the livestock in trespass if it can be determined.

Damage may be due to unseasonable grazing, overgrazing, or the improper grazing of reseeded areas. An accurate evaluation of the damage done the range may be complicated. However, careful study should permit a determination of the reduction in stocking that is desirable and necessary and the duration of such reduction required to rehabilitate the range that has been damaged by unseasonable or excessive use. By converting this reduction to the forage values on the same bases as provided for under (1) above, the amount to be assessed against the trespasser can be determined. The amount of damage to reseeded areas should be based on the cost of whatever reseeding may be necessary as a result of the trespass.

In the tender of payment (Form 4-620), the lands on which the trespass occurred must be described by legal subdivisions, if surveyed, or properly identified with reference to existing landmarks, if unsurveyed. The signature of the trespasser should be witnessed by the investigating officer.

The tender of payment (Form 4-620) must be accompanied by a statement of the investigating officer showing the various items making up the total, the basis thereof, and his recommendation in form substantially as follows:

Forage consumed, prevailing local commercial value . . $______
(Set forth substantiating data)
Damage to Government property . . . . $______
(Set forth in detail kind of Government property, nature and extent of injury, and method used in determining damages)
Total . . . . $______

Class of livestock ____________________ Number ______________ (in trespass)

Intent or belief of trespasser ______________________________

Recommendation ______________________________ (Relates to civil liability only)

Officer ______________________________
(Name) (Title) (Date)

The circumstances under which the trespass was committed and the intent or belief of the trespasser will be given serious consideration by the Regional Administrator in determining whether a trespass was wilful.

In handling trespass cases, every reasonable effort should be made to obtain a tender of payment covering the civil liability. Resort to the courts will be taken only after every reasonable administrative effort has failed. The likelihood of bringing a trespass case to a satisfactory conclusion without resorting to court action depends largely upon judicious handling of the case in its initial stages. An unnecessary display of authority usually arouses resentment and makes it more difficult to obtain compliance with the rules and regulations. Firmness is essential in dealing with trespasses. However, it is necessary to be firm without being offensive. If possible, new or inexperienced men should not be assigned alone to handle trespass cases. Direct assistance should be afforded to each new or inexperienced man during his first trespass case.

Disciplinary action under Federal Range Code; Bonding; Reduction or cancellation of leases.

If the owner or person in charge of the livestock, after service of trespass notice, removes the trespass livestock within the time specified, further action by the Bureau, whether or not a tender of payment has been made, will be governed by the seriousness of the offense committed and the amount of damage done. Where a tender of payment is not made by a trespassing licensee or permittee, the Regional Administrator may cite him to appear before a Hearing Examiner of the Bureau to show cause why his license or permit should not be reduced or revoked, as outlined in Section 11(d) of the Federal Range Code (43 CFR 161.11(d). Any Section 15 grazing lease is subject to reduction or cancellation for violation of the terms of the lease or of the applicable regulations (43 CFR, Part 160). In cases of repeated violations, a district licensee or permittee may be required to furnish bond as outlined in Section 11(e) of the Federal Range Code (43 CFR 161.11(e). When it is determined that a bond should be furnished by an operator, he should be so informed by written notice. Such notice should state the reasons therefor and the amount of the required bond, which should be sufficient to cover all anticipated damages.

If the range manager determines that immediate removal of trespass livestock from the grazing district is imperative, he may proceed, under local impoundment law and procedure, in accordance with the provisions of Section 11(b) of the Federal Range Code (43 CFR 161.11(b). Such procedure, however, is not favored because of possible injury to stock, necessity for proper corrals, adequate feed, water, care, and protection during impoundment, and consequently should be resorted to only in extreme cases. All such cases must be promptly reported to the Regional Administrator.

Report of Trespass.

2 copies to RO except court cases -
4 copies to RO

All trespass cases must be reported to the Regional Administrator on the Grazing Trespass Report (Form 4-1143). The Regional Administrator will determine whether a tender of payment shall be accepted or any further action taken.

Court proceedings.

In the submission of a case to the Regional Administrator, where recommendation is made for court proceedings against a licensee or permittee, the person originating the recommendation must report and submit the following (in four copies):

(1) A copy of application for permit or license.
(2) A map or diagram of the land where the trespass occurred.
(3) A statement giving the date or dates of examinations, the area examined and how identified, the numbers of stock in trespass by count or tally (exclusive of any stock under six months of age), the brand or brands, time and dates stock was in trespass, and an estimate of damages.
(4) A statement giving the names and addresses of witnesses to the trespass, and a brief statement from each witness of all pertinent facts of which he has knowledge, relating to the trespass or, if such statement cannot be obtained, a recital of the testimony that may be expected from such witness.
(5) Book and page of record of brand ownership.
(6) Copy of any tender of payment (Form 4-620) offered.
(7) Copies of all trespass notices issued and a brief statement as to whether any notice was wholly or partially complied with, or totally disregarded, in the time allowed for the removal of the stock.
(8) Recommendations.

Recommendations for the institution of legal proceedings to abate cases of continuing trespass should be made promptly.

Grazing of horses without licenses or permits, has created serious overgrazing problems near some western towns. A Federal court injunction against one or more such persistent trespassers should be effective.

In forwarding trespass cases to the Director with recommendations for the institution of court proceedings, all reports and related data should be submitted in triplicate.

Criminal proceedings.

Trespassers are not relieved of criminal liability by payment of civil damages.

Criminal prosecution is an effective way to stop trespass. As a general rule, administrative action should be taken before recommending criminal prosecution. Criminal prosecutions, which are costly and time consuming, should not be used as a substitute for administrative action when the latter is effective in control of the trespass. But for the flagrant trespasser, criminal prosecution may be the only effective means of stopping the trespass.

In any case in which recommendation is made for criminal prosecution, all of the data called for in paragraphs numbered 1 to 8 under the heading "Court Proceedings", above, shall be submitted promptly to the Regional Administrator.

All cases involving prosecution in the Federal courts are presented by the Director to the Solicitor for submission to the Department of Justice. The Regional Administrators are without authority to submit such cases directly to United States attorneys for prosecution. Representatives of the Bureau, upon request, shall cooperate fully with United States Attorneys.

Control of unbranded horses.

The Federal Range Code provides in part (43 CFR 161.10(b)(1)): "The provisions of statutory law of any State in which grazing districts are located with reference to the branding of livestock and sanitary requirements are hereby incorporated as a part of the Federal Range Code for Grazing Districts and all licensees and permittees shall comply with the provisions in effect in the State or States in which any part of the grazing district or districts in which their licenses or permits are to be effective are located."

Some States claim ownership to unbranded horses. The livestock sanitary laws of the various States are thus of paramount importance in the control of trespass by unbranded horses. Attempts have been made to control unbranded and unclaimed horses in some districts by closing orders.

As now provided by the regulations, control of grazing by unbranded and unclaimed horses must be accomplished in accordance with the pertinent State laws in which the activity is being conducted.

General Rules of the Range.

The Federal Range Code provides, in part (43 CFR, 161.10): "(a) Acts prohibited. The following acts are prohibited on the Federal Range:

"(1) Grazing livestock upon or driving livestock across the Federal Range, including stock driveways, without an appropriate license or permit, whether regular or free-use, or a crossing permit.

"(2) Grazing livestock upon or driving livestock across the Federal range, including stock driveways, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

"(3) Allowing livestock to drift and to graze on Federal range, including stock driveways, without a license or permit, either regular or free-use.

"(4) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

"(5) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

"(6) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law: Provided, That permits to carry on controlled burning of vegetative cover or brush may be issued by the Bureau of Land Management in proper cases, such permits to be subject to such conditions as the Bureau of Land Management may see fit to impose, and to all State laws and regulations concerning such burning.

"(7) Maliciously molesting, or driving from the Federal range livestock lawfully grazing thereon under an appropriate license or permit.

"(b) Rules of fair range practice. The following rules of fair range practice shall be complied with by all licensees and permittees, both regular and free-use:

"(1) The provisions of statutory law of any State in which grazing districts are located with reference to the branding of livestock and sanitary requirements are hereby incorporated as a part of the Federal Range Code for Grazing Districts and all licensees and permittees shall comply with the provisions in effect in the State or States in which any part of the grazing district or districts in which their licenses or permits are to be effective are located.

"(2) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats, and ten miles per day for cattle or horses: Provided, That an increased or decreased rate of travel may be prescribed in such permit if, in the discretion of the range manager, the circumstances in any given case so require.

"(3) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, shall pay a proportionate share of the cost of managing livestock licensed or permitted within the range area in instances wherein associations for such management have been formed, and shall bed sheep and goats according to instructions issued by the Bureau of Land Management. Upon request by the majority of the users of any community allotment of Federal range, the Bureau of Land Management may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements by the Bureau of Land Management, the provisions of State law on the subject shall be regarded as applicable."

/This section of the trespass handbook supersedes Circulars M-63, June 12, 1943; M-65, August 11, 1943; M-71, December 28, 1945; and M-76, March 19, 1946, each designated "M-TRESPASS-Procedure" and issued by the former Grazing Service./

E. OCCUPANCY TRESPASS

Occupancy trespass consists of unauthorized use of the public land for residential or for business purposes, either separately or in combination. The major portion of this kind of trespass has been the result of custom. Certain tracts have been occupied for years without the knowledge of the Bureau or its predecessors.

Occupancy trespass exists, for example, when a person:

(1) files an application for public land, takes possession, and occupies the land before final action on the application;
(2) occupies a cancelled homestead;
(3) owns adjoining land and constructs and occupies buildings on the public land without knowing the exact boundary line;
(4) occupies the land without having exercised reasonable diligence to insure his right of possession;
(5) deliberately places buildings upon public lands for business purposes under a guise, such as a mining claim.

The public should come to realize that any individual must have legal possession of land before using it. Through improved management and expeditious handling of applications much occupancy trespass will be eliminated. The immediate problem is to take action to reduce existing trespass, much of which has developed over a long period of time, and to proceed promptly against any new or recurring trespasses. It is anticipated that most of the present trespassers on the public lands will cooperate and will take such steps as are necessary to eliminate their trespasses. However, there may be some who will intentionally and wilfully occupy public lands in trespass.

The trespasser will be expected to eliminate the trespass promptly either by removal of his buildings and discontinuance of his occupancy of the land, or by acquiring or leasing the land through applicable law and regulations. He will also be expected to make payment for his use of the land. If, after notice, the trespasser refuses to move from the land or fails to obtain proper authorization to continue his occupancy, recommendation should be made for the institution of suit to eject him from the land.

Report of Trespass.

Show county on report

When occupancy trespass is discovered on the public lands, the officer discovering the trespass, or the employee designated by the Regional Administrator, shall determine the status of the land and prepare a full report by memorandum as to the extent and circumstances of the trespass. The report should show the value of the improvements, the approximate date on which the occupancy started, the extent and amount of any damage to the public lands, the rental charges for similar types of land in the locality, and any amount tendered for use of the lands. Charges for any unauthorized occupancy of land should be made in accordance with BLM Order No. 392, July 22, 1949. (BLM Manual, Part 231)

Tender of Payment.

Tender of payment should be obtained from the trespasser subject to the same conditions as previously set forth for timber and grazing trespass. All notices of trespass and demands for payment must be reduced to writing and reported to the Regional Administrator.

Trespass Arising from Action by a Third Party.

Some trespass exists on the public lands by persons who, in good faith, lease or buy the land from someone other than the Government. This occurs for example, when a State follows the practice of leasing public land at the time it files an application for a state exchange or a state selection. In some States it is a common practice for the lessee to pay a rental both to the State and to the Bureau. Since payment is made to the Bureau this does not constitute a trespass. In other instances, however, the State leases the public land at the time it files an application, and the lessee pays a rental to the State only. This is trespass and the State and the lessee should be notified immediately. The lessee also should be notified to apply to lease the land from the Bureau until title passes to the State. Where there is a question of title between the Government and a State, rental payments should be held in escrow until the ownership of the land is determined.

Another trespass that results from action of a third party is a situation in which uncertified or unpatented land in a former railroad land grant claim has been sold prior to September 18, 1940, to an innocent purchaser for value. The purchaser may have completed extensive development and may be using the land. Application for such land may be filed by the railroad company in accordance with section 321, Part II, Title III of the Transportation Act of 1940 (54 Stat. 954; 49 U.S.C. sec. 65). (See also 43 CFR, Part 273).

Color of Title.

When occupancy trespass is discovered on the public lands, one of the first considerations will be to determine whether the occupant has a color-of-title claim. If he does, trespass charges should not be made until a decision on the color-of-title claim is reached. If it is determined that the occupant can obtain title under the color-of-title procedures (43 CFR, Part 140), no charges will be made for the use of the land. If not, he will be considered to be in trespass and payment for damages should be demanded.

Mineral Claim.

Occupancy of an invalid mining claim must be stopped and improvements must be removed unless the trespasser obtains legal authority to continue in possession of the land.

Error in Patent.

If an occupancy trespass exists by reason of an error in a patent, notice of trespass (Form 4-1098) should be served upon the trespasser and he should be informed that he has a right to apply for a corrected patent (43 CFR, Part 104). No damages should be sought pending issuance of such corrected patent.

F. MINERAL TRESPASS

Mineral Trespass on Invalid Mining Claims.

A mining location may be made under the Federal mining laws on the unreserved vacant public lands. A mining location made on withdrawn or reserved lands is void. When locations are found to be invalid because located after a withdrawal, the locator should be notified by registered mail that such location is invalid as shown by the records of the land office. He should also be notified that his occupancy or use of the land based on such invalid location is in trespass, and that the extraction of any resources will be deemed a wilful trespass for which he will be held liable in damages, or subject to criminal prosecution. The Regional Administrator under delegation of authority may direct adverse proceedings in cases where the defect is not disclosed by the records of the land office. Generally, it is the function of the Manager of the land office to inform mineral applicants that withdrawn land is not subject to disposal under their applications because of such withdrawal, and that operations on such invalid claims would constitute wilful trespass.

Coal Trespass.

In the past it has been advantageous to the Government to list as a suspected trespass, every application pertaining to coal. The possibility of mineral trespass in other non-metallic minerals, such as sand and gravel, is not common because the average individual who has located any valuable deposit of such material is sufficiently familiar with the mining laws to locate his claim properly. Therefore, this discussion will be confined to a typical coal trespass case, although the same general principles and procedures are applicable to other mineral trespass cases.

An application for a coal prospecting permit or a coal lease does not carry any rights to mine the coal until a permit or lease is granted. Any unauthorized removal of coal from public lands or from lands in which the coal has been reserved by the Government prior to the date of actual issuance of a coal prospecting permit or coal lease or subsequent to the cancellation of any such permit or lease, is a trespass. Each applicant should be served with a memorandum notice (Form 4-694b), either in person or by registered mail, that coal may not be removed before allowance of the application. Extraction of coal in disregard of this notice constitutes a wilful trespass.

Investigation.

Except in cases of coal trespasses initially investigated and reported by the Geological Survey to the Regional Administrator pursuant to Departmental Order No, 2519, May 19, 1949, a check should be made of the records of the land office to determine whether the required notice was actually served on the applicant.

Actual field work should begin with the identification of the lands involved, to be followed by a brief geological examination for the purpose of determining the number of coal seams outcropping on the lands, their position in the stratigraphic column, their strike and dip and their respective thicknesses. Factors important from the standpoint of mining operations are the nature of the beds immediately overlying the coal seams, the hardness of the coal, and the occurrence of interbedded shaley or sandy impurities, commonly referred to as "bone".

In appropriate cases all mine workings on the lands should be mapped and the thickness of the coal seams measured at a number of places, the spacing between measurements to be governed by irregularities of the seams. A compass survey will be sufficiently accurate in most cases. However, if the workings are very extensive, or if local attraction makes the compass unreliable, a transit survey may be necessary. The problem of surveying as a whole may be greatly facilitated if it is possible to obtain maps prepared by a qualified engineer who has surveyed the workings. Often such maps are available in the office of the District Mining Supervisor, Mineral Leasing Division, Geological Survey. Most State laws also require the filing of maps with a State mine inspector or similar official. Such maps may be inspected by the examiner. In cases where the trespass mining exists on lands previously mined legitimately, surveys should be limited to those parts of the workings involved in the trespass operations.

In the course of his investigation the examiner is in a position to note improper and unsafe mining methods. His report should draw attention to such practices so that the information may be forwarded to the District Mining Supervisor of the Geological Survey in appropriate cases. The existence of coal fires on public lands should be reported to the Regional Administrator by wire immediately upon discovery. The examiner's report should contain a brief description of loading and shipping facilities such as roads, tipples, chutes, etc., that he may find on the lands.

Following the mapping of the mine workings, all available records pertaining to the shipment and sale of coal should be inspected and abstracted. Where mining operators sell to truckers or operate their own trucks for direct delivery to consumers, weights may be obtained from the records of the mine operators. Where shipments are made by rail, the records of the railway company should be considered preferable to the records of the mine operators.

Where available production records are inadequate for determining the tonnages of coal mined in trespass, the examiner will find it necessary to make his determination on the basis of progress dates entered on mine maps during the period of investigation, or in the absence of such data, from information supplied by the operators and their employees. In computing tonnages from the extracted volumes as shown on maps, consideration should be given to the fact that the amount of salable coal is unavoidably reduced through slacking and losses of fines. Often boney impurities are sorted out by hand with a consequent reduction of salable tonnage. It has been determined that the bituminous and sub-bituminous coal of western coal fields average 25 cubic feet per ton if measured in place before breakage. By using this factor a fairly accurate estimate of the tonnage removed can be made on the basis of mine maps.

Reports on individual coal fields published by the Geological Survey should be consulted by the examiner for all pertinent information. In an innocent trespass, the measure of damages is the value of the coal in place. This can be determined by subtracting the cost of mining and transportation to the place of sale, from the sale price. In many cases, however, it is impractical to obtain this information accurately. Past experience and investigations have shown that the value of coal in place is approximately 25 cents per ton, and this figure may be used where necessary.

After completing the investigation, the examiner should demand from the trespasser a tender of payment (Form 4-620) for the value of the coal mined in trespass. Remittance should be made payable to the Treasurer of the United States, and should be in the form of a money order, cashier's check, or certified check.

Where coal mining is being carried on in trespass, the examiner should serve notice of trespass (Form 4-1098). Personal service on the operator or his authorized agent should be made and acknowledgment of service obtained, if possible.

Continuance of trespass operations after the service of such notice renders the trespasser liable to criminal prosecution under 18 U.S.C. sec. 1851, which provides a penalty for the mining of coal in wilful trespass. If, in the judgment of the examiner, it is inadvisable to stop mining operations, the Regional Administrator should be consulted for instructions.

No coal permit, lease, or license will be issued to anyone known to have mined coal in trespass until payment of damages has been accepted and the trespass case closed. (43 CFR, 238.10).

The owner of land patented with a reservation of the coal deposits, either under the act of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), or under the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83 - 85), has the right to mine coal for use upon the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits. (43 CFR, 288.11).

Provisions of the United States Code.

18 U.S.C. Sec. 1851. Coal depredations.

"Whoever mines or removes coal of any character, whether anthracite, bituminous, or lignite, from beds or deposits in lands of, or reserved to the United States, with intent wrongfully to appropriate, sell, or dispose of the same, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"This section shall not interfere with any right or privilege conferred by existing laws of the United States."

30 U.S.C. Sec. 208. Permits to take coal for local domestic needs.

"In order to provide for the supply of strictly local domestic needs for fuel, the Secretary of the Interior may, under such rules and regulations as he may prescribe in advance, issue limited licenses or permits to individuals or associations of individuals to prospect for, mine, and take for their use but not for sale, coal from the public lands without payment of royalty for the coal mined or the land occupied, on such conditions not inconsistent with sections 181-194, 201, 202-208, 211-214, 223-229, 241, 251, and 261-263 of this title as in his opinion will safeguard the public interests...."

G. PROPERTY TRESPASS

Property trespass is the unauthorized use, abuse, disturbance, injury, destruction or theft of structures, improvements, or other property of the United States, including:

(1) Theft of Government-owned property of any kind.
(2) Destruction or damage to Government records.
(3) Wilful destruction, defacement, changing or removal of any survey corner, meander post, witness tree, monument or bench mark of any Government survey.
(4) Tearing down or defacing official signs, posters or notices.
(5) Disturbing, injuring or destroying fire caches, field equipment, motorized vehicles, hand tools, etc.
(6) Breaking, injuring or destroying fences, cattle guards and corrals.
(7) Disturbing, damaging or destroying telephone lines, lookout towers, dams, springs, or other improvements.
(8) Damaging, and leaving in disrepair, any Government roads, trails, bridges, or landing strips.
(9) Breaking, entering, occupying or using without authority (except in emergencies) any Government building.

Investigation of property trespass cases requires the same diligence and attention as other forms of trespass. The nature and extent of the specific offense must be determined, witnesses sought and signed statements obtained, if possible. If the facts warrant, the Regional Administrator may conclude a property trespass case when the Government is made whole by the trespasser through restoration of damaged property to its prior condition, or tender of payment for damages caused by the trespass. However, criminal prosecution shall be recommended in all cases of theft and in all other cases in which the investigating officer finds evidence that the trespass was malicious or wilful.

Service of a notice of trespass should be made in every property trespass case, where the trespasser's identity is known or can be ascertained. Tender of payment for damages should be demanded except in those special circumstances where it is impossible to appraise damages. In all cases of theft of Government property, recommendation should be made promptly for criminal prosecution of the trespasser. Thereafter demand for payment of civil damages should be made, unless the property has been recaptured intact.

Where theft is involved, the Government has the same rights as any citizen to recapture its property. Stolen property should be seized at any time and place where found, if it can be identified positively as the property of the United States. Wrongful seizure of property which is thought, but not known, to belong to the Government, may subject the seizing officer to suit if the person from whom it was seized can establish legal title to the seized property. The value of seized property cannot later be recovered in civil suit from the trespasser nor from the purchaser of stolen property when such property is recovered intact by the Government. Criminal liability, however, is unaffected by recapture or by payment for civil damages.

Reports of property trespass should be prepared in memorandum form setting forth all the facts accurately and in detail.

Provisions of the United States Code:

18 U.S.C. Sec. 1361. Government property or contracts.

"Whoever willfully injures or commits any depredation against any property of the United States, or of any department or agency thereof, or any property which has been or is being manufactured or constructed for the United States, or any department or agency thereof, shall be punished as follows:

"If the damage to such property exceeds the sum of $100, by a fine of not more than $10,000 or imprisonment for not more than ten years, or both; if the damage to such property does not exceed the sum of $100, by a fine of not more than $1,000 or by imprisonment for not more than one year, or both."

18 U.S.C. Sec. 1362. Communication lines, stations or systems.

"Whoever willfully or maliciously injures or destroys any of the works, property, or material of any radio, telegraph, telephone, or cable, line, station, or system, or other means of communication, operated or controlled by the United States, whether constructed or in process of construction, or willfully or maliciously interferes in any way with the working or use of any such line, or system, or willfully or maliciously obstructs, hinders, or delays the transmission of any communication over any such line, or system, shall be fined not more than $1,000 or imprisoned not more than three years, or both."

H. MISCELLANEOUS TRESPASSES

Any unauthorized use of the public land is a trespass. There are many forms of use not specifically discussed in the foregoing part of this handbook. These include:

(1) Agricultural use (e.g., farming or gardening).
(2) Unlawful enclosures.
(3) Structures requiring rights-of-way, site leases or permits.
(4) Resources not specifically included.
(5) Warehousing and stockpiling.
(6) Motion pictures.
(7) Nuisance trespass (e.g., city dumps).
(8) Antiquities.
(9) Water trespass.
(10) Wildlife depredations.

Any of these miscellaneous trespasses may occur alone or in combination with other kinds of trespass. Bureau officers discovering or investigating such trespass should proceed against the violator or group of violators for every form of trespass committed. For example, one case may include simultaneous actions against a trespasser for occupancy, agricultural, grazing, unlawful enclosure and timber trespasses. The procedure to be followed in each part of such a case will be that presented in section "A. General" above, as elaborated in the subsequent sections pertaining to specific forms of trespass.

Reports submitted to the Regional Administrator should include all the facts concerning each kind of trespass. Some material fact, although it may appear to the officer at the time of investigation to be insignificant, might be important for the consideration of the Regional Administrator. Unless there is a special form (see Appendix B) for reporting a particular kind of trespass, the report should be submitted in memorandum form.

After a trespass case has been closed, application for a special land use permit may be considered. As a matter of policy special land use permits are issued for special purposes not specifically provided for by the existing land laws (43 CFR, Part 258).

Agricultural Uses.

The measure of damages in an agricultural trespass should be computed in the manner set forth in Bureau Order No. 392 (BLM Manual, Part 231.8).

Unlawful Enclosures.

Anyone enclosing public lands or erecting structures thereon without authority is subject to the provisions of 43 U.S.C. sec. 1061 et seq. (43 CFR, Part 289), a violation of which constitutes a misdemeanor. Notice to remove the unlawful enclosure or structure (Form 4-1152) should be served on the person who erected or who is maintaining it. If the trespasser refuses or fails to comply with the terms of the notice, recommendation should be made for the institution of suit to compel the removal of the unlawful enclosure or structure. If it is feasible to determine the amount of damages to be assessed against the trespasser, demand for payment should be made, or suit recommended for collection of damages if the circumstances warrant.

When an application made under the public land laws is rejected or cancelled, and where it is known or believed that the lands contain improvements, the applicant or entryman should be notified by the Bureau to remove any such improvements, or to show cause why he should not be required to do so. (Order No. 125 of the former General Land Office, dated November 25, 1941.) Continued maintenance of any such improvements constitutes a trespass.

Fences constructed prior to the passage of the Taylor Grazing Act could have been constructed legally only if constructed upon lands in valid settlement claims or outstanding homestead entries. Such fences or other improvements as may have been constructed on lands in settlement claims or homestead entries which have been abandoned, are property of the United States. Structures placed on lands without color or claim of title are the property of the United States.

Upon abandonment or relinquishment of a public land entry, all rights of the settler or entryman are divested and the land is restored to the public domain. Carroll v. Price 81 Fed. 137. Where a preemptor abandons his preemption and leaves buildings or other permanent improvements thereon, he abandons such improvements and has no right to remove them. Hiatt v. Brooks, 17 Nebr. 33, 22 N.W. 73. On relinquishment of a homestead entry, the United States is entitled to crops growing on the land relinquished. Moore v. Linn, 19 Okla. 279, 91 Pac. 910. It has also been held that where the Government sells land to one, or permits one to file a homestead entry on Government land, the purchaser or entryman not only acquires absolute right of possession, but also title to any improvements and growing crops thereon. Floyd v. Ricks, 14 Ark. 286. By the great weight of authority, the rule that an article annexed to land by a stranger to the title becomes a part of the land and so the property of the landowner, applies to structures placed on lands of the United States by one having no right therein, these being held to pass as part of the realty to one subsequently entering or purchasing the land. Treadway v. Sharon, 7 Nev. 37.

In the case of an abandoned homestead or settlement claim it is clear that such abandonment serves to restore to the United States the full title to the land and such restoration of title also serves to vest in the United States title to all improvements on the land. Furthermore, the United States, as owner, is entitled to do any and all things necessary to permit such use of the land as it desires, including the removal of any fences or other impediments to such use. And as the title to these improvements is in the United States and has been lost by the former owners, there is no obligation to give notice of removal to these parties nor necessity for any court action. The materials salvaged in the removal of fences which were illegally constructed on public lands or which were constructed on lands formerly embraced in settlement claims or homestead entries but now abandoned, are the property of the Government and may be used in any manner the Government sees fit. In the case of materials salvaged from fences removed by Government employees under the direction of the Bureau, it is proper to use these materials in the construction of other Government fences or for such other Government improvements as may be necessary in carrying on proper range management.

Rights-of-Way.

The regulations applicable to rights-of-way for canals, ditches, reservoirs, water pipe lines, telephone and telegraph lines, tram roads, highways, oil and gas pipe lines, electrical plants and transmission lines, etc., are contained in 43 CFR Parts 244 and 245. Structures of these kinds are sometimes placed upon the land without prior authority in which cases they are maintained in trespass. For the most part these projects are of important public value and do not materially interfere with the orderly use of the remaining land. If found compatible with the public interest, the manager may grant authority to construct project works over and through Interior Department lands, other than Indian lands, in advance of approval of a permit or easement for the right-of-way or site upon a satisfactory showing of the necessity. (43 CFR 244.10).

If a trespasser is engaged in construction, he should be served with written notice of trespass and instructed to cease construction until he has obtained proper authority to continue. Failing to obtain such authority, he should be required to remove the structure or structures and pay damages. If the construction has been completed, written notice should be served upon the owner and tender of payment for damages should be demanded. Amounts to be demanded shall be computed from the date the use began.

Authority for the maintenance of stock watering reservoirs may be granted pursuant to the provisions of the Taylor Grazing Act (43 U.S.C. sec. 315 et. seq., 43 CFR 160.16, 161.14).

Resources Not Specifically Included:

Trespass involving the taking or use of any Government material not expressly discussed in this handbook should be handled in a manner similar to that applicable to other resources.

Warehousing and Stockpiling.

The measure of damages in warehousing or stockpiling trespasses should be based upon the reasonable value of the use of the land during the full period of use and should include also any direct damage to the public lands and resources. Application for the use of Government land for such purposes should be made under the Special Land Use Permit regulations (43 CFR, Part 258).

Motion Pictures.

The filming of any motion or sound pictures on any lands under the jurisdiction of the Department of the Interior is governed by the regulations (43 CFR, Part 5). Filming motion pictures without proper authority is a trespass. Notice of trespass (Form 4-1098), should be served upon the violator and demand should be made for payment of damages in an amount not less than the rates of charges established in 43 CFR, Part 5, with additional charges to include all damages resulting from the operation. Permission to continue filming may not be granted until payment has been offered and bond is furnished in accordance with the regulations.

Nuisance Trespass.

Nuisance trespass usually exists in the form of any operation that results in unsightly land. A noted example is the dumping of refuse, trash, garbage or other waste material. A town or city dump located on public land is the most offensive example of nuisance trespass. If possible, notice of trespass should be served on the person responsible for the trespass and demand made for restoration of the land to a clean and sightly condition, and for payment of any damages to property or other resources of the Government.

Steps should be taken to encourage proper and orderly land use. For example, towns and cities should be encouraged to develop and use sanitary fills. Special land use permits could be issued for such developments.

Antiquities.

The Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 433), provides that any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument or any object of antiquity situated on lands owned or controlled by the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated shall, upon conviction, be fined in a sum of not more than $500 or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

The act provides for the issuance of permits by the Secretaries of Interior, Agriculture, and Army, upon lands under their respective jurisdictions, to examine ruins, excavate archaeological sites, etc. The Secretary of the Interior is authorized to provide uniform rules and regulations for the protection and control of such antiquities, including prehistoric hieroglyphics, ruins, dinosaur bones, historic stagecoach stations, forts, etc. (43 CFR, Part 3).

Any violation of the act is a trespass. Report of such violations should be made promptly to the Regional Administrator. Any object of antiquity taken, or collection made, on Government lands, without a permit or contrary to the terms of a permit, should be seized. Disposal of such seized objects will be made only as the Secretary shall instruct.

Posting objects of antiquity with warning notices (Form 1-437), should help serve to minimize antiquities trespass.

Water Trespass.

Water trespass consists of the unauthorized development, taking or using of Government water, and includes pollution. Notice of trespass (Form 4-1098) should be served on the trespasser and demand should be made for payment of damages. State laws also are involved in water trespass cases, particularly with respect to title. Such questions should be referred to the Regional Administrator for consideration.

The unauthorized taking or using of water struck while drilling wells for oil and gas under a mineral lease (43 U.S.C. sec. 229a), after such wells have been plugged or abandoned also constitutes a trespass. Unauthorized use should be reported promptly to the Regional Administrator. Proper authority to use water produced from such wells may be granted by the Secretary (30 CFR, Part 241).

The provisions of the Taylor Grazing Act (43 U.S.C. 315 et. seq.) and the regulations (43 CFR 160.16, 161.14) provide for the construction and maintenance of stock watering reservoirs, wells and other range improvements. Applications (Form 4-1115) to maintain such improvements may be considered after payment of damages has been offered.

Pollution is one form of trespass that results usually from dumping waste material, refuse or debris directly into a waterhole, body of water, stream, streambed or other drainage course, or on lands in such a manner as to be readily washed into such body of water or drainage course. If possible, notice of trespass should be served on the person responsible for the pollution and demand made for removal of the waste material and for damages.

Wildlife Depredations.

Executive Order No. 7944 of August 4, 1938, authorizes officers of the Bureau to accept appointments, without compensation, as deputy fire wardens and deputy fish and game wardens under the laws of the States in which such officers may be on duty. Wildlife is one of the resources of the public lands and Bureau management of these resources is one of the direct responsibilities of its officers. Actions against wildlife depredations will be taken in accordance with State laws. Additionally, on game ranges subject to joint administration by the Bureau and the Fish and Wildlife Service pursuant to 50 CFR, Part 20, any depredation or evidence of depredation should be called immediately to the attention of the local representative of the Fish and Wildlife Service.

PART V. LEGAL CONSIDERATIONS

The foregoing sections of this handbook have considered trespass from an over-all or general operating viewpoint. At various points, reference has been made to court actions and other legal processes. Under the present organization of the Bureau, with regional counsels available for technical assistance to operating officials of the Bureau, it is not necessary that the latter attempt to learn all the intricacies of legal procedures. However, a reasonable knowledge of such matters is helpful in the day to day activities of the Bureau, for it can never be known in advance when an apparently routine action will become the crucial factor in a difficult trespass case. The material in this section is presented for the benefit of the nonlegal personnel of the Bureau. Whenever this material does not seem to cover a particular situation, or whenever doubt exists, the appropriate regional counsel should be consulted.

Trespass Under Federal Law and Decisions.

The present rules for computing damages are set forth in the regulations (43 CFR, Part 288), and BLM Order 392 of July 22, 1949, (BLM Manual, Part 231). The amount of damages to which the Government is entitled is computed on the basis of the laws of the State in which the trespass is committed. The regional counsels in the respective regions are charged with the duty of ascertaining the State laws applicable to the particular type of trespass. State laws will not be considered here, except the Oregon statutes relating to timber trespasses, and other similar statutes, which present unusual situations.

The problem as to the proper method of computing trespass damages arises in those states which do not have statutes prescribing damages. Computation of damages in such cases is based upon the decisions of the Federal courts and the general common law rules relating to damages. Unfortunately there is no uniform Federal trespass damage act in effect at present. Such a law, of course, would greatly facilitate the computation of damages. A proposed uniform Federal trespass damage bill has been prepared by this Bureau and is now being considered for submission to the Congress. Such legislation would simplify greatly the computation of damages.

Generally, intent plays a major role in all trespass cases. Intent affects the extent of a trespasser's liability for his unauthorized acts. Obviously it would be inequitable to assess identical damages for an unlawful act done deliberately or wilfully with actual knowledge of its unlawful character and for an unlawful act committed unintentionally, inadvertently, or as the result of a bona fide mistake of fact. Because the determination of the wilfulness or innocence of the trespasser in committing an unauthorized act must be made from the factual data in the trespass report, it is apparent that such report must be prepared very carefully and must contain all the pertinent facts. This does not mean that such reports must necessarily be verbose.

Timber Trespass.

In the leading case of Woodenware v. United States, 106 U.S. 432, the Supreme Court enunciated certain rules to be followed in computing damages. These rules with but few minor changes have been consistently followed by this Department in assessing timber trespass damages in those states which do not have statutes applicable thereto. The Woodenware case holds (a) that if the trespass is wilful, the trespasser is liable for the full value of the property at the time and place of demand with no allowable deduction for the trespasser's labor and expenses; (b) if the trespass is innocent, the trespasser is liable for the value at the time of conversion (i.e. stumpage value). An innocent purchaser from such a trespasser is liable in the same amount, and (c) a purchaser without notice of wrong (innocent purchaser) from a wilful trespasser is liable for the value at the time of purchase.

Concerning item (c), in a memorandum dated July 16, 1947 (M-34960), to the Secretary of the Interior, the Solicitor stated that the proper interpretation required that an innocent purchaser from a wilful trespasser responds by the same rule of damages as his vendor should if he had been sued. Thus it is the present policy to hold the trespasser and the purchaser liable in equal damages. It is reiterated that this method of computing damages applies only where there are no state laws governing such trespasses.

The Oregon statutes relating to timber trespasses should be carefully considered in making demands for damages for trespasses committed in that state. Section 8-406 O.C.L.A. (1950) provides for treble damages in wilful trespass and states that proof of ownership of the lands and of the commission of the trespass is prima facie evidence of the wilful character of the trespass. However, the following section, 8-407, provides that "If upon the trial of such action it shall appear that the trespass was casual or involuntary . . . judgment shall be given for double damages." At first glance it would seem that the statutes provide for treble damages for wilful trespass, and double damages for innocent trespass. This, however, is not so. In the opinion of the Department of Justice, a suit to collect double damages for an innocent trespass cannot be maintained under the Oregon statutes. An action may, of course, be instituted for treble damages for wilful trespass under section 8-406, and double damages may be awarded under section 8-407 "if upon the trial of such action (namely, for wilful trespass under section 8-406), it shall appear that the trespass was casual or involuntary . . . " The Department of Justice has indicated that section 8-407 does not authorize any right of action but is dependent upon and refers wholly to actions instituted under section 8-406; that a complaint charging an innocent conversion of timber would not state a cause of action under the statute but would be held to be an action at common law to recover the value of the timber at the time and place of conversion, namely the stumpage value.

Demands for timber trespass damages in Oregon should be made on the basis of treble damages as provided in section 8-406. If however, the trespasser submits evidence sufficient to rebut the presumption of wilfullness, and concurrently tenders payment of double damages, the payment may be accepted in satisfaction of the trespasser's civil liability. In no case, in view of the interpretation placed on the Oregon statute, should written demand for double damages be made for an innocent trespass. The demand should be predicated on the presumption of wilfullness and the trespasser should be afforded the opportunity of submitting rebutting evidence, together with payment of double damages. Several other western states have statutes similar to those in effect in Oregon, and the above procedure should be followed in such states.

Resource Trespass.

As stated above, the extent of a trespasser's liability for the unlawful extraction of Government resources of any value and description, including coal, oil, turpentine, fertilizers, etc., depends upon whether the trespasser acted in good faith. Evidence of good faith is important in determining whether the trespass is innocent or wilful.

The unauthorized removal, extraction, or conversion of Government resources is presumed to be wilful and intentional. The burden of proof to establish the contrary by a fair preponderance of the evidence rests upon the defendant (See Liberty Bell Gold Mining Company v. Smuggler-Union Mining Company, 203 F. 795; Elkhorn-Hazard Coal Company v. Kentucky River Corporation, 20 F. 2d 67, United States v. Ute Coal and Coke Company, 158 Fed. 20).

The presumption of wilfulness is very important to the Government since its lands and resources cannot be as closely supervised as privately owned lands, and it is often difficult to detect trespass or to obtain proper evidence of wilfulness or innocence. The presumption of wilfulness was recognized and affirmed in United States v. State of Wyoming, and the Ohio Oil Company, 331 U.S. 440. (1947).

The rules employed in ascertaining a trespasser's liability for resource trespass are very similar to those discussed in connection with timber trespasses.

Coal and Ore Trespass.

Innocent--the value of the coal or ore in place before extraction.
Wilful-- the full value at the time of conversion without deduction of any expenses incurred in removal and marketing.

Oil Trespass.

Innocent--value of the oil taken, less expenses incurred in its taking.
Wilful-- value of the oil without deduction for any expenses incurred in its taking.

Turpentine and Other Tree Gum Trespass.

Innocent -- value of the gum, as well as the extent of damages to the trees.

Wilful -- value of the product manufactured from the gum whether by the taker or subsequent processor without credit for labor bestowed.

There are, of course, resource trespasses other than those mentioned. But since the determination of the damages is based upon the foregoing principles, it is not necessary separately to enumerate or consider them here.

Occupancy Trespass.

Anyone occupying and using without authority lands of the United States is liable in damages for the trespass use made of the land. The United States is entitled to recover the reasonable value of the occupancy and use, considering its extent and duration. The reasonable value of such unauthorized use need not be the same as, and may exceed the scale of charges imposed for permitted authorized use of the lands. (Utah Power and Light Company v. United States, 243 U.S. 389).

The amount of the charge to be made for unauthorized occupancy depends upon whether the trespasser is utilizing the land for homesite or similar purpose, or for business purposes. The manner of determining the charges is set forth in BLM Order No. 392, July 22, 1949. (BLM Manual, Part 231).

PART VI REGIONAL SUPPLEMENT

Each Regional Administrator shall develop a supplemental section including applicable State or Territorial Laws and procedures for use by the staff of his Region. Twenty-five copies of each Regional Supplement should be submitted to the Director as soon as possible.

MEMORANDA

APPENDIX A
Exhibit I

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 22, 1949

ORDER NO. 392

MANUAL OF THE BUREAU OF LAND MANAGEMENT

PART 231 --TRESPASS

CHARGES FOR UNAUTHORIZED USE AND OCCUPANCY OF PUBLIC LANDS

231.5 General rule of damages. The rule of damages to be applied in cases of trespass on the public lands should be based on the measure of damages prescribed by the laws of the State in which the trespass is committed. (43 CFR 288.1). In the absence of a State law, the following rules should be observed in the computation of charges due for the unauthorized use and occupancy of public lands:

231.6 Unauthorized occupancy for homesite purposes only. For the unauthorized occupancy of public land for homesite purposes only, the charge should be computed on the basis of the reasonable value of the occupancy of the land. The charge should be computed from the date that notice, written or oral, shall have been given, by a representative of the Government, to the occupant that his occupancy of the land is unauthorized and constitutes a trespass.

231.7 Unauthorized occupancy for business purposes. For the unauthorized use and occupancy of public land for business purposes, or for business and residential purposes combined, the charge should be based on the schedule of charges prescribed for the use of public lands for business purposes. The schedule is as follows:

One per cent per annum of the first $5,000 gross income, but not less than $20 a year;
One-half per cent of the gross income between $5,000 and $15,000;
One-fourth per cent of the gross income over $15,000.

The charge should be computed from the date that the land was first withdrawn if the use began prior thereto. If the use began subsequent to the withdrawal, the charge should be computed from the date that the use began.

231.8 Unauthorized agricultural use. For the unauthorized use of public land for agricultural purposes, the charge should be based on the reasonable value of the use that is made of the land as determined on the basis of the agricultural rental value of privately-owned lands similar to and in the vicinity of the public land. The agricultural rental value is based generally upon either an annual rental charge per acre or upon a share of the crop production or of the profits realized therefrom. The charge should be computed from the date that the land was first withdrawn if the use began prior thereto. If the use began subsequent to the withdrawal, the charge should be computed from the date that the use began.

231.9 Unauthorized grazing use. For the unauthorized grazing use of public land, either within or outside a grazing district or in a stock driveway, the charge should be based on the amount and value of the forage consumed. The value of the forage consumed should be based generally on the commercial rate charged customarily in the locality, or other reasonable geographical area, for similar forage. For the unauthorized grazing use of public land withdrawn for a stock driveway, the charge should be computed from the date of the stock driveway withdrawal if the use began prior thereto. If the use began subsequent to the withdrawal, the charge should be computed from the date the use began. For the unauthorized grazing use of vacant public land outside a grazing district or a stock driveway, the charge should be computed from the date that the person so using such land is notified that his use is unauthorized and that the grazing use of public land is no longer unrestricted but is controlled by the Taylor Grazing Act and the regulations issued thereunder. Administrative expenses involved in the discovery and proof of the trespass may not be included in the trespass charge (Chief Counsel's opinion of May 23, 1947. Grazing memorandum M-71 of December 28, 1945. Jonce B. Eccles, A-24580, April 4, 1947. Posvar v. Borland, A-24403, April 21, 1947. Evarista McCormick Conner, A-24406, October 10, 1947, Jane M. Sandoz, A-24641/24638, October 28, 1947).

231.10 Damage to land or other property. In any unauthorized use and occupancy of public land, if the land or other Government property is injured or destroyed as a result of the trespass, a sufficient amount should be included in the trespass charge to cover the actual damages thereto.

(Sgd) Roscoe E. Bell
Associate Director

Approved by
Under Secretary of the Interior
Oscar L. Chapman, by
Memorandum dated July 22, 1949

APPENDIX A
Exhibit II

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Order No. 411 January 24, 1950

AUTHORITY OF REGIONAL ADMINISTRATORS To Act in Trespass Cases

Subparagraph 83 of Order No. 363 of January 5, 1949, is amended by deleting the last sentence thereof. The subparagraph as amended reads as follows:

(83) Determine the liability for trespass on the public lands in their respective regions in accordance with the rules set forth in 43 CFR, Part 288, and the applicable court and departmental decisions, and demand and accept payment of the amount determined to be due by reason of such trespass.

The order of the Director of Grazing of December 28, 1945 (M-71, M-Trespass Procedure) is hereby revoked so far as it limits the authority of the regional administrators in grazing trespass cases to the acceptance of propositions of settlement of $500 or less.

(Sgd) Roscoe E. Bell
Associate Director

Note: This subparagraph (83) constitutes one of the items of authority delegated to the Regional Administrators. (Formerly codified as 43 CFR 50.451 (a) (83)

Published in the Federal Register
Volume 15, Number 20, of January 31, 1950
page 516

APPENDIX A
Exhibit III

Circular No. 1721

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43—PUBLIC LANDS: INTERIOR

CHAPTER I—BUREAU OF LAND MANAGEMENT

PART 289—UNLAWFUL ENCLOSURES OR OCCUPANCY

Section 289.4 is amended to read as follows:

289.4 Filing of charges or complaints. All charges or complaints against unlawful enclosures or obstructions upon the public lands should be filed with the proper regional administrator. Such charges or complaints, when possible, should give the name and address of the party or parties making or maintaining such enclosure or obstruction and should describe the land enclosed in such a way that it may be readily identified. The section, township, and range numbers should be given, if possible.

Sections 289.5 to 289.11, inclusive, and sections 289.13 to 289.15, inclusive, are deleted from Title 43.

Footnote 7 to section 289.1 is amended by adding thereto the following: "Violations of any of the provisions of the act of February 25, 1885, constitute a misdemeanor (Sec. 4, 23 Stat. 322; 35 Stat. 40; 43 U.S.C. 1064)."

(Sgd.) Marion Clawson

Director

Approved: January 10, 1949

(Sgd.) J. A. Krug

Secretary of the Interior.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Washington

May 19, 1949.

ORDER No. 2519

Subject: Trespass on public lands and on certain withdrawn or reserved lands.

Sec. 1. Reports of trespass to be made by departmental employees. All bureaus and offices of the Department of the Interior having field representatives are hereby directed to instruct such representatives to report promptly to the appropriate regional administrator, Bureau of Land Management, all cases coming to their notice of unauthorized occupation, use or trespass on the public lands, including timber depredations, trespass involving the removal of coal or other mineral deposits, and unauthorized use for railways, tramways, pipe lines, ditches, canals, reservoirs, telephone or telegraph systems, power plants or bill boards; also to report any unauthorized occupation or use of withdrawn or reserved lands under the jurisdiction of such bureaus or agencies, where authority for occupation or use could be granted through the Bureau of Land Management on proper application under the public land laws. The field representatives will regard all occupation or use as unauthorized, for the purpose of reporting it, unless it is expressly authorized by law or is based on authority which has been actually granted by this Department.

Sec. 2. Responsibilities of employees of the Geological Survey. Although this duty of reporting rests on all departmental employees and extends to all types of trespass cases, it is especially important that the district or deputy mining supervisors make prompt and complete reports to the appropriate regional administrator, Bureau of Land Management, of all coal trespasses growing out of operations conducted by a mineral lessee, permittee, licensee, or applicant therefor. These officials are already charged with the specific responsibilities of periodic inspection of coal lands embraced in leases, prospecting permits, or applications therefor, under the act of February 25, 1920 (41 Stat. 437, 30 U.S.C. sec. 181 et seq.), and of ascertaining and reporting the facts as to damages to coal deposits on such lands, or on adjacent Government lands (See 30 CFR, 211.3 (e), 211.4 (a)(b). To avoid the need for additional investigation by the Bureau of Land Management, coal trespass reports by the district or deputy mining supervisors should be furnished in complete detail and should be submitted on BLM Form 4-730 (Report on coal trespass) direct to the appropriate regional administrator, Bureau of Land Management. In addition, and as soon as possible after discovery of the trespass, where it grows out of operations conducted by a mineral lessee, permittee, licensee, or applicant therefor, the mining supervisor will require the trespasser to stop the coal trespass and will collect damages for the coal mined in trespass. All such payments, and reports regarding failure of any such trespassers to respond in damages, shall be forwarded to the appropriate regional administrator.

In all cases of coal trespasses other than those growing out of operations conducted by a mineral lessee, permittee, licensee, or applicant therefor, reported to the regional administrator by the district or deputy mining supervisor pursuant to the provisions of Sec. 1 hereof, the regional administrator will take such action as the facts warrant as provided in Sec. 3 hereof.

Sec. 3. Action by the regional administrator. The regional administrator, upon receiving any trespass reports, will obtain any additional information needed to determine the character and extent of the trespass liability. After the necessary information has been obtained, the regional administrator will take such action as the facts warrant.

Sec. 4. Revocation. Departmental Order 1514 of August 17, 1940, is revoked.

(Sgd.) J. A. Krug

Secretary of the Interior.

APPENDIX A
Exhibit V

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington 25, D. C.

May 23, 1947

MEMORANDUM

To: Director

From: Chief Counsel

Subject: Grazing Trespass Charges

At the conference of the Regional Administrators on April 29, 1947, Mr. Reid, Assistant Chief, Branch of Range Management, stated, in his discussion of grazing trespasses, that present trespass charges are based on the range appraisal studies of 1940. The charges range from $.08 per a.u.m. (animal unit a month) in Arizona to $.57 per a.u.m. in Utah; charges in the other States fluctuate within these two extremes. Mr. Reid expressed dissatisfaction with the present basis of the determination of trespass charges; he stated that the low trespass charges in some States tended to encourage rather than to deter grazing trespasses as the charges were much lower than the commercial grazing rates prevailing therein. Mr. Reid recommended an average trespass charge based on recent studies of comparable state-wide costs of grazing on privately-owned lands; he stated that this would average about $.75 per a.u.m. and he recommended that there be added to this amount, as a part of the trespass charge, the administrative expenses incurred in the investigation of any particular trespass. Mr. Reid stated that the computation of grazing trespass charges on this basis would be similar to the "proven trespass procedure" used by the Forest Service, whose West-side trespass is $1 per a.u.m. plus administrative costs. (Minutes of the Regional Administrators' Conference). The suggested revision in the determination of grazing trespass charges is discussed herein.

The Act of June 4, 1897 (30 Stat. 35; 16 U.S.C. sec. 551) authorizes the Secretary of Agriculture to make rules and regulations for the occupancy, use and protection of the national forests. The Secretary of Agriculture, in the exercise of that authority, promulgated regulations designed to protect the national forests from trespass. 36 CFR 261.14 provides:

> "_Elements of damage in livestock trespasses._ In all stock trespasses on the national forests the value of the forage consumed will be computed at the daily, monthly, or yearly commercial rates prevailing in the locality for the class of livestock found in trespass.

> "In addition to the damages to national forest property injured or destroyed and in order to compensate the United States fully for any loss resulting from trespass by livestock, a charge may be made and added to the value of the forage consumed which shall include the pro rata salary of the forest officers for the time spent and the expenses incurred in and about the investigations, reports, and prosecution of the case."

The Forest Service Manual, "Volume III - National Forest Protection and Management, (M) Trespass" incorporates the cited regulation and provides further that in the event no commercial rate can be established within the immediate vicinity of the area trespassed upon from which the value can be determined, the nearest tract or tracts may be used.

Although the regulation provides for the inclusion of "the pro rata salary of the forest officers for the time spent and the expenses incurred in and about the investigations," Mr.Mynatt, Associate Solicitor, Department of Agriculture, advised informally that the Department had been informed by the Department of Justice that such items were not considered proper elements of damages in its grazing trespass cases and that recovery therefor, under the regulation, would not be sought in any of its trespass cases in which suit is instituted. Mr. Walter Williams, Assistant Chief, Trials Section, Lands Division, Justice Department, confirmed informally this statement.

The Secretary of the Interior is authorized, under Section 2 of the Taylor Grazing Act (48 Stat. 1270; 43 U.S.C. sec. 315a) to make rules and regulations for the occupancy, use and protection of grazing districts. However, as the Department of Justice has held that "the pro rata salary of the forest officers for the time spent and the expenses incurred in and about the investigations" are not proper elements of damages in grazing trespasses and that recovery therefor would not be allowed, a similar regulation by the Secretary of the Interior to that effect should not be proposed.

The method of determining the value of the forage consumed in a trespass on the basis of the daily, monthly, or yearly commercial rates prevailing in the locality in which a trespass occurs is a fair and reasonable one and appears to be in consonance with the common law rule as to trespasses and could be applied even in the absence of an administrative regulation. The "reasonable value" rule is stated in Utah Power & Light Co. v United States, (243 U.S. 389, 411) as follows:

> "As the defendants have been occupying and using reserved lands of the United States without its permission and contrary to its laws, it is entitled to have appropriate compensation therefor included in the degree. The

> compensation should be measured by the reasonable value of the occupancy and use, considering its extent and duration, and not by the scale of charges named in the regulations as prayed in the bill. However much this scale of charges may bind one whose occupancy and use are under a license or permit granted under the statute, it cannot be taken as controlling what may be recovered from an occupant and user who has not accepted or assented to the regulations in any way."

The present regulations of this Department provide:

> "The rule of damages to be applied in cases of timber, coal, oil, and other trespass in accordance with the decision of the Supreme Court of the United States in the case of Mason et al. v United States (260 U.S. 545, 67 L. ed. 396), will be the measure of damages prescribed by the laws of the State in which the trespass is committed." 43 CFR 288.1.

In the absence of a State law prescribing the measure of damages recoverable for a grazing trespass, the rule cited in Utah Power & Light Co. v United States, supra, is applicable.

The Department has under consideration a proposed bill entitled "To prescribe the measure of damages on account of trespasses upon lands or mineral deposits owned by the United States." The proposed bill provides that if the trespass is wilful or the resource is received or acquired with knowledge that the resource has been taken in trespass, the measure of damages shall be either the value of the resource at the time and place of demand or commencement of suit, or treble the value of the resource in place at the time of the trespass, whichever amount shall be greater. If the trespass is innocent, or the resource is received or acquired without knowledge that the resource has been taken in trespass, the measure of damages shall be double the value of the resource in place at the time of the trespass, except that if a free permit or license to take the resource for the purpose for which it was taken might have been issued to the trespasser under the then existing laws or the regulations of the Department, only the value of the resource in place at the time of the trespass may be recovered.

Pending the final consideration of the proposed bill, it is recommended that, in the absence of a State law prescribing the measure of damages for a grazing trespass, the charges for grazing trespasses be based on the commercial rates prevailing in the locality, or other reasonable geographical area, in which the trespass occurs. Selection of the grazing district in which the trespass occurs as the reasonable geographical area would not seem to be subject to successful attack. A state-wide or nation-wide area would, undoubtedly, be objectionable. A sufficient amount should be included also to cover the actual damages to property injured or destroyed.

(Sgd) Jacob N. Wasserman,

Chief Counsel

Approved: May 26, 1947

(Sgd) Thomas C. Havell,
Acting Assistant Director

APPENDIX A
Exhibit VI

EXECUTIVE ORDER

AMENDMENT OF THE EXECUTIVE ORDER OF JANUARY 17, 1873, RELATING TO THE HOLDING OF STATE OR LOCAL OFFICES BY FEDERAL OFFICERS AND EMPLOYEES

By virtue of and pursuant to the authority vested in me by section 1753 of the revised statutes of the United States (5 U.S.C, sec. 631), and as President of the United States, the Executive Order of January 17, 1873, as amended, prohibiting, with certain exceptions, Federal officers and employees from holding State, municipal, or other local offices, is hereby further amended so as to permit employees of the Division of Grazing, with the approval of the Secretary of the Interior, to accept appointments as deputy fire wardens and deputy fish and game wardens under the laws of the States in which such employees may be on duty: Provided, that their services as such deputy fire wardens and deputy fish and game wardens shall be without compensation and shall not in any manner interfere or conflict with the performance of their duties as employees of the Division of Grazing.

Franklin D. Roosevelt

THE WHITE HOUSE

August 4, 1938.

No. 7944

MEMORANDA

Form 1-437
(March 1950)

UNITED STATES

DEPARTMENT OF THE INTERIOR

WARNING

NOTICE IS HEREBY GIVEN that any person or persons who injure or destroy or, without specific authority from the Secretary of the Interior, excavate or appropriate any historic or prehistoric ruin, monument, object of antiquity, or of scientific interest, will be subject to arrest and punishment under the provisions of the act of Congress approved June 8, 1906.

APPLICATIONS FOR PERMITS under the provisions of section 3 of the act of June 8, 1906, from reputable museums, universities, colleges, or other recognized scientific institutions, or their duly authorized agents, will be considered by the Secretary of the Interior, Washington, D. C.

Form 1-437a
March 1950

ESTADOS UNIDOS
DEPARTAMENTO DEL INTERIOR

ADVERTENCIA

SE HACE SABER POR ESTE que cualquiera persona o personas que dañe o destruya, sin la autorización precisa del Secretario del Interior, excave o tome posesión de cualesquiera ruinas, monumento, objeto de antigüedad, o de interés científico, históricas o prehistóricas, será sujeta al arresto y castigo conforme a los preceptos do la ley approbada por el Congreso el 8 de Junio de 1906.

LAS SOLICITUDES PARA PERMISOS, conforme a las prevenciones do la fracción 3 de la ley de Junion 8 de 1906, presentadas por los museos, universidades, colegios, y otras instituciones cientificas respetables, o por sus agentes debidamente autorizados, serán tomadas en consideración por el Secretario del Interior, Washington, D.C.

Form 4-511
(March 1950)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

PROPERTY OF THE UNITED STATES

WARNING TO TRESPASSERS

ALL PERSONS are prohibited under penalty of the law from felling, killing, injuring, or removing any tree, timber, or other thing of value, from these lands without due authorization.

THE UNITED STATES CODE (TITLE 18), PROVIDES IN PART

SECTION 1361: "Whoever willfully injures or commits any depredation against any property of the United States, or of any department or agency thereof, or any property which has been or is being manufactured or constructed for the United States, or any department or agency thereof, shall be punished as follows:

"If the damage to such property exceeds the sum of $100, by a fine of not more than $10,000 or imprisonment for not more than ten years, or both; if the damage to such property does not exceed the sum of $100, by a fine of not more than $1,000 or by imprisonment for not more than one year, or both."

SECTION 1855: "Whoever, willfully and without authority, sets on fire any timber, underbrush, or grass or other inflammable material upon the public domain or upon any lands owned or leased by or under the partial, concurrent, or exclusive jurisdiction of the United States . . . shall be fined not more than $5,000 or imprisoned not more than five years, or both."

SECTION 1856: "Whoever, having kindled or caused to be kindled, a fire in or near any forest, timber, or other inflammable material upon any lands owned, controlled or leased by, or under the partial, concurrent, or exclusive jurisdiction of the United States . . . leaves said fire without totally extinguishing the same, or permits or suffers said fire to burn or spread beyond his control, or leaves or suffers said fire to burn unattended, shall be fined not more than $500 or imprisoned not more than six months, or both."

SECTION 1858: "Whoever willfully destroys, defaces, changes, or removes to another place any section corner, quarter-section corner, or meander post, on any Government line of survey, or willfully cuts down any witness tree, or any tree blazed to mark the line of a Government survey, or willfully defaces, changes, or removes any monument or bench mark of any Government survey, shall be fined not more than $250 or imprisoned not more than six months or both."

VIOLATORS will be prosecuted in the United States courts to the full extent of their civil and criminal liability.

DIRECTOR
BUREAU OF LAND MANAGEMENT

[Note: Form 4-511 will be printed on paper stock and Form 4-511a on linen.]

APPENDIX B
(Forms)

Form 4-694b
(March 1950)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

____
(Office)

____
(Date)

Application:

You are hereby notified that the filing of your application, the number of which is given above, for a coal ______________________ confers no right upon you to remove coal from the land applied for prior to the issuance of a coal prospecting permit, lease, or license.

The unauthorized mining of coal is a trespass and will subject you to criminal prosecution under Section 103(a), Title 18, United States Code, and to civil liability for damages to the United States for the value of the coal at the time of conversion, without deduction for labor bestowed or expense incurred in removing and marketing the coal. Such liability is provided for by 43 CFR 288.6(b) and is in accordance with the decision in the case of Liberty Bell Gold Mining Company v. Smuggler-Union Mining Company, 203 Fed. 795.

You will hereafter be notified through this office as to the action taken on your application.

____

____
(Title)

Form 4-620
(January 1950)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

TENDER OF PAYMENT OF TRESPASS OBLIGATION

I, ______________________________, of ______________________________
(Name) (Address)

hereby offer and tender the amount of $____________ by money order or certified check payable to the Treasurer of the United States in full satisfaction of my obligation to the United States arising out of the following act:*

____

____

____

____

____

____

____

Description of the lands involved: ____________________________________

____

____

____

____

____

____

The trespass was committed (with) (without)1/ knowledge that such lands were Government lands or lands under its jurisdiction.

*Examples of trespass acts:

a. "Cut and removed_____ft. B.M. timber from"
b. "Timber cut in trespass from"
c. "Mined_____tons of coal from"
d. "Occupied as a site for ______purposes and derived $________as gross income therefrom
e. "Grazed approximately _____cattle,____horses, _____sheep,_____goats, amounting to__________ days' grazing use on"
f. "Removed _____cu. ft. of ________________"
g. Other acts, as needed.

1/ Cross out inapplicable words

This offer is made in acknowledgment of the rights of the United States and of the civil liability of the undersigned, and for the purpose of avoiding litigation. The payment may be deposited for collection and the money held until a final determination of my liability is made by the United States.

I (do) (do not)[1] agree that in the event this tender of payment is not accepted, and the amount due the Government exceeds the amount hereby tendered, this payment may be applied on the total indebtedness.

I certify that the statements made by me in this tender of payment are true, complete, and correct to the best of my knowledge and belief, and are made in good faith.

______________________________ (Witness)

______________________________ (Signature)

Title 18, U.S.C., sec. 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

---

[1] Cross out inapplicable words.

Form 4-730
(July 1949)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

____
(Date)

COAL TRESPASS REPORT

MEMORANDUM:

To: Regional Administrator, Region _____,
Bureau of Land Management.
____

From: ______________________
____
____

The following report of trespass is made pursuant to Departmental Order No. 2519 of May 19, 1949.

1. Name of trespasser ______________________

Address ______________________

2. Periods during which trespass was committed ______________________

3. Land trespassed upon ______________________

Status of land:
Vacant public land? ______________________

Patented land? _____ If patented land, under what act were coal deposits reserved to the United States? ______________________

Does the trespasser own the surface? ______________________

4. Was the land involved in a pending application for permit, license, or lease? ______________________

Was applicant notified that the filing of his application conferred no right to mine? ______________________

Final disposition of application ______________________

5. Reason for removal of coal ______________________
(Whether for domestic use, barter, or sale)

6. Tonnage mined:
Has any of the coal been seized? ______________________

If so, where, by whom, and how much? ______________________
____

How is this coal guarded? ____________________

7. Value of coal per ton:
In place? ____________________
At tipple? ____________________
Delivered? ____________________

8. Has the coal been sold? ____________________
Names and addresses of purchasers and amounts purchased ______
____
____

Was coal sold in place, at tipple, or delivered to purchasers?
____
____

Price given or agreed upon ____________________

Whether purchases were made with or without knowledge of trespass ____________________

9. Witnesses to trespass ____________________
____

10. Date or dates of field investigation if made ____________
Have you attached statement of your own testimony? __________

11. Did the trespasser allege that he believed he had a right to mine the coal? ____________________

12. If he alleged such a belief, what basis therefor did he advance?
____

13. What facts, if any, tend to establish that such a belief in the circumstances was such that a reasonably prudent person would entertain? ____________________

14. Financial responsibility of parties involved ____________

15. Has trespasser offered to settle, and on what terms? ________

16. If trespasser has not offered to settle, has demand been made on purchasers? ____________________

17. If offer in settlement has been made but payment has not been made in full and demand has not been made on purchaser, state reason ____________________

____

____
(Title)

Form 4-731
(March 1950)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

____
(District or Area Office)

____
(Date of Examination)

____
(Date of Report)

TIMBER TRESPASS REPORT

1. Name of trespasser: ____________________

   Address: ____________________

2. Land trespassed upon: ____________________

   ____

3. Land Status. ____________________

4. Dates of trespass ____________________

5. Amount and kind of timber__________ Stumpage value__________

   __________value __________Total value __________
   (State applicable value, such as felled, manufactured, etc.)

6. Method of estimating volume of timber, if removed __________

7. If timber seized, state when, where, by whom seized, quantity and present location ____________________

   ____

8. If timber sold, state quantity, price, names and addresses of purchasers ____________________

   ____

   ____

9. List witnesses, with addresses, attaching copies of their statements ____________________

   ____

10. Facts to which examining officer will testify ____________________

    ____

    ____

11. If the trespasser alleged belief in his right to take the timber, what was the basis for his belief?________________

____

____

12. State any facts that would justify such a belief by a reasonably prudent person ________________________

____

(If possible, secure a signed statement from the trespasser and enclose it with this report. The parties involved in the trespass should always be requested to submit a statement as to the facts. If they refuse, so report. Attach a copy of the notice of trespass (Form 4-1098) served and evidence of service.)

13. Other material facts ____________________________

____

____

14. Financial responsibility of all parties involved __________

____

____

15. Has trespasser tendered payment of damages?______________

16. Has demand been made on purchasers? __________________

____

17. If payment of damages has not been made in full, state reasons and date when payment will be made __________________

____

18. Comments and recommendations ________________________

____

____

____
(Examining Officer)

____
(Title)

4-1089
November 1947

(PREPARE IN TRIPLICATE)

Prepared by ....
....
(Title)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Class: A B C D E F G
(Circle class of fire)

Date ....

False alarm ☐ Nonreportable fire ☐

FIRE REPORT

State ....

Region .... District .... Name of fire .... District fire No. ....

MAP—Make scale to fit conditions.

County ....

S. .... Twp. .... R. ....

(If more space is required use township plat; show point of origin.)

Estimated size when suppression began .... acres. In Clarke-McNary Zone ....
(Yes or No)

CAUSE OF FIRE

Lightning ☐

Railroad ☐

Smokers ☐

Burning debris ☐

Incendiary ☐

Camp fires ☐

Miscellaneous ☐

Airplane ☐

Show location, topographical features, and perimeter of area burned on map.

RESPONSIBLE PEOPLE

Local .... Outside ....

CLASS OF PEOPLE

Transient	☐	Hunter	☐
Stockman	☐	Prospector	☐
Fisherman	☐	Farmer	☐

Others (specify) ....

TOPOGRAPHY

Rolling	☐	Flat	☐
Rugged	☐	Steep	☐

Exposure ....
(N., S., E., W.)

Wind .... Direction ....
(N., S., E., W.)

Elevation .... feet.

GRAZED CONDITION

Ungrazed	☐	Light	☐
Medium	☐	Heavy	☐

TRAVEL, DETECTION, AND SUPPRESSION TIME RECORD

TIME STARTED:

Approx.: Hr. .... a. m., p. m. Date ....

Exact: Hr. .... a. m., p. m. Date ....

REPORTED:

When: Hr. .... a. m., p. m. Date ....

How ....

By whom ....

To whom ....

ACTION:

Who left for fire ....

When: Hr. .... a. m., p. m. Date ....

From where .... Number men ....

Elapsed time between report and start of first crew:

Hr. .... Min. ....

Traveled .... miles. How ....
(Car, horse, etc.)

Arrived at fire: Hr. .... a. m., p. m.

Date ....

Travel time ....

DISCOVERED:

When: Hr. .... a. m., p. m. Date ....

By whom ....

Title ....
(Guard, patrolman, lookout, stockman)

SUPPRESSION:

Work began with initial crew ....

Reinforcements arrived: Hr. .... a. m., p. m.

Date .... Number men ....

Fire under control: Hr. .... a. m., p. m.

Date ....

Fire out .... a. m., p. m. Date ....

Patrol released .... a. m., p. m. Date ....

SUPPRESSION TIME:	MAN-DAYS	HOURS
Bureau of Land Mgt.		
Forest service		
Other cooperation		
TOTAL (including patrol)		

ORIGIN OF FIRE, ACREAGE OF COVER TYPES BURNED, BY LAND OWNERSHIP OR CONTROL

	B. L. M.	Other Government Land [2]		Private	State	County	Total Burned
Fire Started On [1]—							
	(USE WHOLE NUMBERS ONLY)						
Type of Plant Cover Burned	*(Acres)*	*(Acres)*	*(Acres)*	*(Acres)*	*(Acres)*	*(Acres)*	*(Acres)*
1. Grass and weeds—Annuals							
Perennials							
2. Brushland—Desert							
Sagebrush							
Mountain brush							
3. Woodland—Pinion Juniper							
Mixed							
4. Timber—Evergreens							
Broadleaf							
5. Other—Cultivated							
Or							
Total Acres							

	DAMAGE APPRAISAL (to nearest dollar only) [3]						
Forage burned (A. U. M.'s)							
Value							
Amount of posts and poles							
Value							
Amount of saw timber							
Value							
Total Values							

Watershed value, $ Other type Value, $

Improvements (type) Value, $ What acreage of burned area, if any, needs reseeding?

Livestock: Number and class Value, $

Equipment (type) [3] Value, $ Estimated cost, $

ESTIMATED COST OF FIRE SUPPRESSION

Bureau of Land Management		*Cooperators*		
Expended From Fire-Fighting Funds	*Expended From Other Funds*	*Federal*	*Non-Federal*	*Total Estimated Cost of Fire*
$	$	$	$	$

LAW ENFORCEMENT

Arrests Name Address

Charge: Criminal Civil Conviction

Amount of fine, $ Jail sentence Days Pending

Further investigation by

Remarks (use additional sheet if necessary):

Regional office check approved Title

---

[1] Indicate where fire originated by check mark below appropriate land ownership.

[2] Indicate agency as R-Reclamation, I-Indian, etc. Show only total acreage burned on Indian, Park, and National Forest areas. Make no attempt to show these by types burned.

[3] Other than that used in suppression.

Form 4-1098
(March 1950)

Region ________
State ________
District ________

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

NOTICE OF TRESPASS

Date ____________________

____
(Name)

____
(Address)

YOU ARE HEREBY NOTIFIED that you are in trespass in that you (are violating) (have violated)* the law specified below and the regulations approved by the Secretary of the Interior pursuant to the authority vested in him by said law, in that:

(1) Act committed: ____

____

(2) Law violated: ____

____

(3) Regulation violated: ____

____

on the following described land (describe the area by legal subdivision if surveyed, or if unsurveyed, by concise reference to such natural landmarks as will clearly identify the area):

____

____

____

You are allowed ____ days from receipt of this notice within which to cease the trespass operation and tender payment of damages, or to show that you have not violated the law or the regulations, if such is the case. Tender of payment, accompanied by your statement on Bureau Form 4-620, may be made by money order, cashier's check, or certified check payable to the Treasurer of the United States. If you fail to cease the operation, or to show proper authority for the operation, the matter may be brought to the attention of the United States Attorney for appropriate action.

____
(Name)

____
(Title)

* (Delete inapplicable words.)

CERTIFICATE OF SERVICE

I,________________________, certify that on the ____________ day of ____________19___, I served written notice on______________________, of ________________ (city or town), ______________ (State), the party's address of record, by a true copy of the within notice by personal service ☐ or by registered mail ☐. If by registered mail, the envelope containing said notice bears registry stamp No._____________ and that registry return receipt marked "for addressee only" has been demanded.

____
(Name)

____
(Title)

Form 4-1143
(March 1950)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

____
(District or Area Office)

____
(Date of Examination)

____
(Date of Report)

GRAZING TRESPASS REPORT

1. Name of Trespasser: ______________________

   Address: ______________________

2. Land trespassed upon: ______________________

   ____

   ____

   (Trace land on a township diagram and attach. If unsurveyed, indicate by proximity to streams, peaks, or other natural objects, distance and direction from nearest surveyed lands, towns, etc. If surveyed, describe by section, township and range. If land is in a mining district and mine workings or mineral claim monuments are observed, so indicate.)

3. Land Status. The trespass was committed on:
   - (a) Federal Range. ☐
   - (b) Vacant public land subject to grazing lease. ☐
   - (c) Other land administered by the Bureau. ☐

4. Case History:
   - (a) How long has the trespasser been an operator in the area?
     ____
   - (b) Is he a licensee, permittee, or lessee? ______________________
     (If so, attach copy of his application and copy of his license, permit, or lease, and copy of any unpaid fee notices.)
   - (c) Is this his first trespass record known? ______________________
     (If not, refer to previous records by dates and places.)
   - (d) Have any previous warnings been given to the trespasser?
     ____
   - (e) Was the trespass reported to the Bureau or was it discovered by a Bureau officer? ______________________
   - (f) Describe accurately where the trespass occurred: ______________________
     ____

(g) How was the land identified? ____________

(h) Character of the land (topography, etc.) ____________

(i) Describe any corners or monuments used in identifying the land. ____________

(j) Were the trespass livestock counted? ____________

(k) Were the brands identified? ____________

(l) How was ownership of the livestock determined? ____________

(m) Give the numbers and kinds of animals that can be proven in trespass. ____________

(Attach the count or tally sheets and give references to the State brand recordation book. Draw a picture of the brands. Damages will not be collected for animals less than six months old.)

(n) Indicate the number of animals less than six months old included in the tally: (If none, write "None".) ____________

(o) Did the livestock drift into the area or was it driven in? ____________

(p) Was the area closed to grazing? ____________

(q) Opening date of unit for grazing? ____________

(r) Closing date of unit for grazing? ____________

(s) Are the boundaries of the allotment or unit marked? ____________

(t) If unit was fenced, were gates open or closed? ____________

(u) Did the trespasser have reason to know that the lands trespassed upon were the property of the United States? ____________

(v) Detail of facts that might indicate whether the trespass was committed innocently or wilfully. ____________

(If possible, secure a signed statement from the trespasser and enclose it with this report. The parties involved in the trespass should always be requested to submit a statement as to the facts. If they refuse, so report. Attach a copy of the notice of trespass (Form 4-1098) served and evidence of service. If photographs were taken, prints should be enclosed, together with a narrative description of what each print shows.)

5. Witnesses. Names and addresses of witnesses to the trespass. State briefly the testimony to be expected from each. ____________

Testimony must be as to facts. Here inferences, opinions, and hearsay evidence are not acceptable. Attach statements and exhibits showing the evidence upon which the officer expects to have his recommendation sustained. A report without such statements is insufficient.

6. **Damages.** The value of the damages suffered by the United States:

____

____

____

(Include the value of forage consumed and other damages.)

7. **Tender of Payment.**
   - (a) Has the trespasser offered a Tender of Payment of Trespass Obligation (Form 4-620)? ______________
     (If so, enclose a copy.)
   - (b) Do you recommend acceptance of the payment? __________
   - (c) Reasons for recommendation. ______________________
     ____
     ____

8. **Action Recommended.**
   What action do you recommend:
   - (a) Civil action? ☐
   - (b) Criminal action? ☐
   - (c) Both civil and criminal action? ☐
   - (d) Disciplinary action, if a licensee or permittee? ☐

   (If civil or criminal action is recommended, this report must be accompanied by a copy of the application for grazing privileges or grazing lease, copy of license, permit or lease issued, copy of fee notice covering the particular trespass period, copy of all trespass notices served upon the trespasser, and any copy of tender of payment offered.)

____
(Examining Officer)

____
(Title)

I concur:

____
Regional Administrator

______________________, 19 ___

NOTE: If additional space is needed for any particular item, attach extra sheets.

Appendix B
(Forms)

Form 4-1151
March 1950

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

NOTICE AND POSTER OF SEIZURE

GOVERNMENT PROPERTY

____
(Date)

To____

Address____

And To All Others Whom This May Concern:

YOU ARE HEREBY NOTIFIED that I have on this____ day of ______, 19__, for and on behalf of the United States of America, seized and taken into my possession the following-described property of the said United States, to wit:

____

____

more or less; that said property has been heretofore unlawfully cut, severed or extracted from the lands of the said United States by trespassers; that said property is now in my possession as an officer of the United States, and is situated upon the following-described lands, to wit:____

____

NOW, THEREFORE, TAKE WARNING: That any person, either in his own behalf or as agent, servant, or employee of another, who shall in any manner remove, damage, destroy, or exert control over any of said property will be prosecuted in the United States courts to the full extent of his civil and criminal liability.

____

____
(Title)

____
(Address)

[Note: Form 4-1151 will be printed on paper stock and Form 4-1151a on linen.]

Form 4-1152
(March 1950)

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

NOTICE TO REMOVE UNAUTHORIZED STRUCTURES

Date ____________________

To ____

Address ____

YOU ARE HEREBY NOTIFIED that the following structure (or structures)* being maintained by you, to wit:

____

____

situated upon the following described public land, to wit:

____

Sec.________ Twp.________ Range__________, ________________ Meridian,

State of __________________, is (are)* in violation of the act of February 25, 1885 (23 Stat. 321; 43 U.S.C. 1061) or the act of June 28, 1934 (49 Stat. 1976; 43 U.S.C. 315f) which prohibit enclosure or assertion of right to use or occupy public land of the United States, without bona fide claim or color of title.

YOU ARE ALLOWED_____days from receipt of this notice within which to remove the said structure (or structures)* or to show that you have authority to continue maintenance, if such is the case. If you do not remove the structure (or structures)*, or show or obtain proper authority to continue maintenance, within the time specified in this notice, the matter may be brought to the attention of the United States Attorney for appropriate action.

____
(Name)

____
(Title)

____
(Address)

*Strike inapplicable words.

CERTIFICATE OF SERVICE

I, ______________________, certify that on the ________ day of __________________, 19 ___, I served written notice on ________ ____________________, of ______________________, ____________,
(City or town) (State)

the party's address of record, by a true copy of the within notice by personal service ☐ or by registered mail ☐. If by registered mail, the envelope containing said notice bears registry stamp No. __________, and that registry return receipt marked "for addressee only" has been demanded.

____
(Name)

____
(Title)

Form 4-1153
(March 1950)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

____
(District or Area Office)

____
(Date of Count)

Time:______AM______PM

CERTIFICATE OF LIVESTOCK COUNT

1. Name of Owner: ______________________________
2. Address: ______________________________
3. Place (Describe lands on which livestock are counted): __________

   ____

   ____
4. Livestock counted:_______sheep;_______goats;_______cattle; _______horses. (The above numbers do not include any animals less than six months old).
5. Grazing in______________ District,________________ Unit.
6. Trailing to______________ District,________________ Unit.
7. Mr.________________, Address,________________, herding.
8. Mr.________________, Address,______________, tending camp.
9. Remarks ____________________________________

   ____

   ____

   ____

Counted by____________________

____
(Title)

/Note: Fill out in triplicate. Leave one copy with owner or person in charge of the stock; send one copy to the Regional Administrator; retain one copy in the district records./

MEMORANDA

MEMORANDA

COPY

ARIZONA March 23, 1950

SPECIAL RULE FOR THE ADMINISTRATION OF CERTAIN LANDS IN ARIZONA GRAZING DISTRICT NO. 1

A proper factual showing of its necessity having been made by the Regional Administrator, the following special rule is prescribed for the Pakoon Allotment in Arizona Grazing District No. 1, pursuant to authority vested in me by section 2 of the act of June 28, 1934 (48 Stat. 1269, 43 U.S.C. sec. 315a), as amended, and in accordance with the provisions of 43 CFR 161.15:

(a) The area affected by the Special Rule shall be the same area described in resolution of the District Advisory Board, dated June 10, 1949, to wit: beginning at a point on the top of the Lower Grand Wash Cliff at approximately the township corner of Twps. 33 and 34 North, Ranges 14 and 15 West; thence in a general northeasterly direction along the rim of said Lower Grand Wash Cliff to approximately the center of Section 3, Township 36 North, Range 14 West (unsurveyed) or the Poccum Wash; thence north along the wash approximately 2 miles to the northeast corner of the northwest quarter of the southeast quarter of Section 26, Township 37 North, Range 14 West (unsurveyed); thence west about 3-3/4 miles to the west quarter corner of Section 30, Township 37 North, Range 14 West; thence southwest to the east rim of Cottonwood Canyon at about the center of Section 10, Township 36 North, Range 15 West; thence southeast along said east rim of Cottonwood Canyon to about the west quarter corner of Section 23, Township 36 North, Range 15 West; thence East about one mile to a point about 1/4 mile west of the Old Nutter Road at the West quarter corner of Section 24, Township 36 North, Range 15 West; thence in a general southwest direction along the east rim of the Cottonwood Canyon basin, being on the west side of the Old Nutter Road to what is known as Nigger Head, a black malapias mass located about a mile southeast of Pakoon Ranch in about the eenter of the northwest quarter of Section 31, Township 35 North, Range 15 West; thence southwest 1/2 mile to a point about 1/8of a mile east of the east quarter coreer of Section 36, Township 35 North, Range 16 West; about 3/4 of a mile north of where the Nutter road tops the black rim after leaving Pakoon Wash; thence west about 2½ miles to the west quarter corner of Section 35, Township 35 North, Range 16 Weet, to a rim of what is known as the Cock's Comb; thence northwest through Sections 34, 27 and 22 to about the northeast corner of Section 21, Township 35 North, Range 16 West; thence west 2½ miles to the Nevada-Arizona State line; thence south about 15 miles to the shore of Lake Mead; thence north along the shore of Lake Mead to the center of Section 3, Township 33 North, Range 16 West; thence north 1 mile; thence west 1/2 mile to the south quarter corner of Section 34, Township 34 North, Range 16 West;

thence north 3½ miles to the center of Section 15, Towhship 34 North, Range 16 West; thence ~~north~~ east 1½ miles to the east quarter corner of Section 14, Township 34 North, Range 16 West; thence north 1½ miles to the northwest corner of Section 12, Township 34 North, Range 16 West; thence east 3 miles to the northeast corner of Section 8, Township 34 North, Range 15 West (unsurveyed); thence south 11 miles to a point about 1/4 mile west of the southeast corner of Section 5, Township 32 North, Range 15 West; thence southwest about 3 miles to the shore of Lake Mead in the Southeast quarter of Section 13, Township 32 North, Range 15 West; thence southeast along the shore of Lake Mead to the southwest corner of Section 34, Township 32 North, Range 15 West; thence north along the Lower Grand Wash Cliff or rim to the place of beginning.

(b) Base property within the meaning of 43 CFR 161.4 shall not be a requirement, or recognized, for grazing privileges in the area.

(c) Grazing privileges within the area shall be allowed annually to regular licensees or permittees in Arizona Grazing District No. 1 to the extent that forage conditions warrant, provided that such use conforms to proper range management practices, in the following preference order:

(1) To applicants who have, or whose predecessors in interest have, since the establishment of the grazing district, made substantial use of the area.

(2) To applicants who have not, or whose predecessors in interest have not, since the establishment of the grazing district, made substantial use of the area.

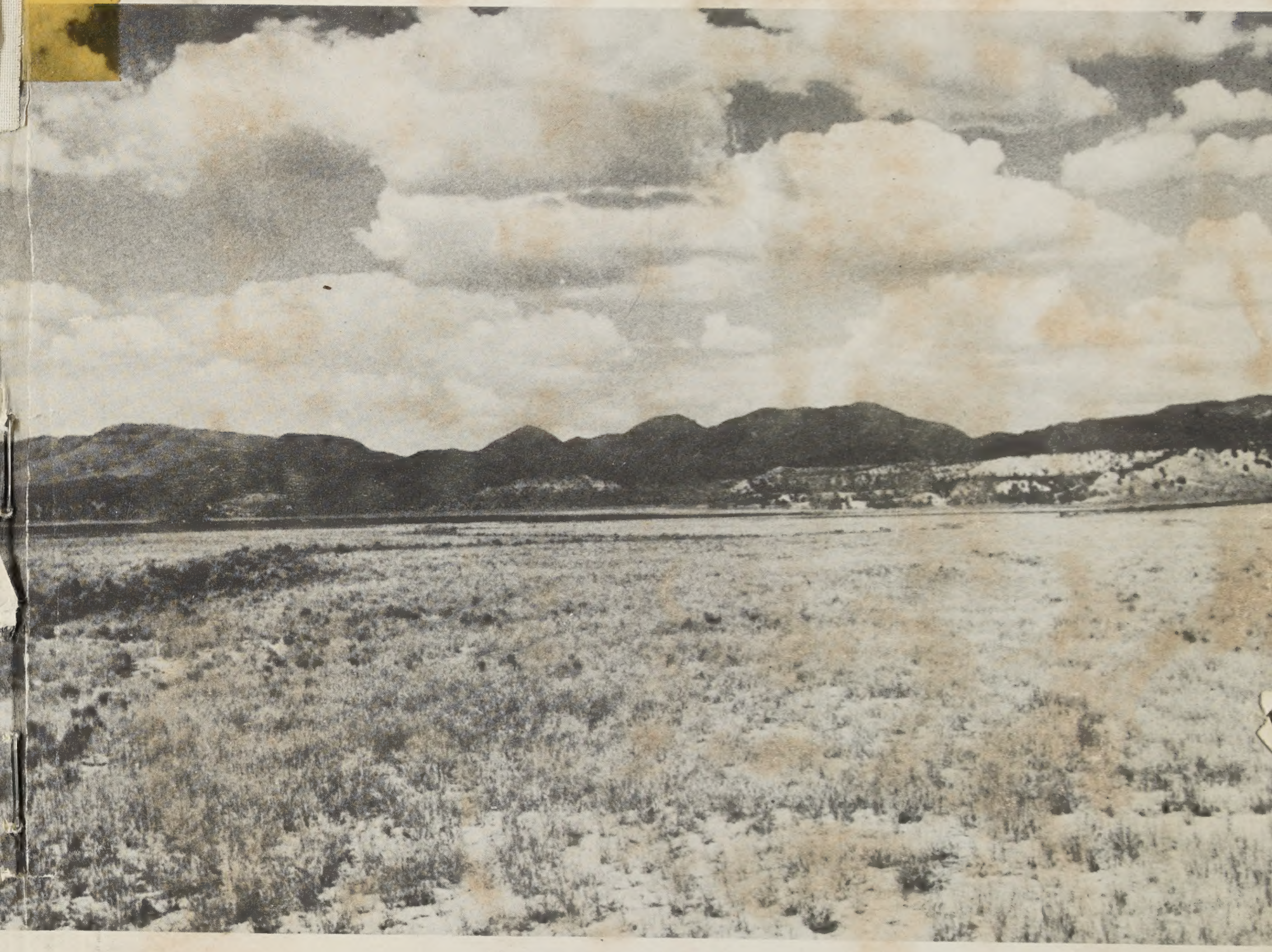
/s/ MARION CLAWSON

Director

Approved: March 30, 1950

/s/ Mastin G. White
Acting Assistant Secretary of the Interior.

THE FEDERAL RANGE CODE
FOR GRAZING DISTRICTS



UNITED STATES
DEPARTMENT OF THE INTERIOR
DOUGLAS Mc KAY, Secretary

BUREAU OF LAND MANAGEMENT
EDWARD WOOZLEY, Director

March 3, 1849

January, 1956

Washington 25, D. C.

Circular No. 1948

TITLE 43 - PUBLIC LANDS:
INTERIOR

Chapter 1 - Bureau of Land Management
Department of the Interior

PART 161 - THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

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[Reprinted from FEDERAL REGISTER of December 23, 1955]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1948]

PART 161—THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

Part 161, The Federal Range Code for Grazing Districts, is revised, effective 30 days from date of publication, to read as follows:

Sec.

161.1 Basic policy and plan of administration.
161.2 Definitions.
161.3 Qualifications of applicants.
161.4 Minimum requirements; classification of base properties.
161.5 Rating and classification of Federal range.
161.6 Issuance of licenses and permits.
161.7 Transfers of base property; base property qualifications; relinquishments.
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161.12 Procedure for enforcement of rules and regulations.
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161.14 Local associations of stockmen.
161.15 Construction and maintenance of improvements on Federal range.
161.16 Special rules for grazing districts.
161.17 Contributions for administration, protection, and improvement of public lands.
161.18 Pledge of licenses and permits as security for loans; applications for extension of permit term by borrower-permittee.
161.19 Saving clause.

AUTHORITY: §§ 161.1 to 161.19 issued under sec. 2, 48 Stat. 1270; 43 U. S. C. 315a.

§ 161.1 *Basic policy and plan of administration.* (a) *Purposes; general requirements.* Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promote the highest use of the public lands within grazing districts which have been or hereafter are established, possession or control of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the Federal range will be required of all users.

(b) *Preference applicants.* Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in a livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner specified in § 161.6. Provision will be made for other applicants so far as Federal range remains available.

(c) *Permits; annual licenses.* Grazing permits may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing, a recommendation thereon made by the advisory board, and approval thereof given by the range manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. The practice of issuing an annual license will be continued until such time as a permit is issued. Upon the issuance of a permit any outstanding license or part thereof which has been granted on the same qualifications on which the permit is based will terminate. Upon expiration of a term permit an annual license may be issued, pending issuance of a new term permit.

§ 161.2 *Definitions.* Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management in or pursuant to the Federal Range Code for Grazing Districts, unless the context otherwise requires:

(a) The "act" means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U. S. C. 315, 315a–315r), as amended and supplemented.

(b) "The Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) The "Secretary" means the Secretary of the Interior or his authorized agent.

(d) The "Director" means the Director of the Bureau of Land Management or his authorized agent.

(e) "State Supervisor" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(f) "Federal range" means land within established grazing districts administered by the Bureau of Land Management under the Federal Range Code for Grazing Districts, including the vacant, unappropriated, and unreserved public land of the United States chiefly valuable for grazing and forage crops; State, County, and privately-owned land leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land.

(g) "Property" means privately owned or controlled land or water used in range livestock operations.

(h) "Base property" means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(i) "Base property qualifications" means the maximum amount of grazing privileges on Federal range properly allowable to base properties in Class I or Class II.

(j) "Forage land" means land the production r livestock.

~~t" by use an Federal he conduct eration re- l range in ch, in the s a part of an established, and continuing livestock operation for any two consecutive years or for any three years~~

1. ~~Paragraph~~ (k) (1) of § 161.2 is amended to read as follows:

§ 161.2 *Definitions.* * * *

10/30/58

(k) (1) "Land dependent by use" means forage land other than Federal range of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the "priority period", was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years of such priority period in connection with substantially the same part of the public domain, now part of the Federal range. Such land may be (i) parallel land, i. e., land of the same character, interspersed with, and grazed at the same time as the Federal range on which grazing privileges may be granted, except in those grazing districts which by special rule have excluded parallel land as base property,[1] (ii) land of different character than the Federal range and which properly supports the permitted livestock during all or part of the period that the Federal range is closed to grazing, or (iii) a combination of these two types of land. The priority period shall be the five-year period immediately preceding June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

10/30/58

---

[1] Such rules were adopted in Montana Grazing District No. 5, Utah Grazing District No. 1, and all grazing districts in Oregon

license or permit within one year after the date when the Federal range used in creating the dependency by use first became a part of a grazing district, except that if the Federal range used in creating the dependency by use became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date. Only the last set of base properties used during the priority period by a livestock operation can be invested with dependency by use by such operation.

(3) The extent to which grazing licenses or permits will be granted on the basis of dependency by use of land, shall be governed by the following:

(i) It shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of any two consecutive years or any three years in which use was actually made during the priority period, whichever is more favorable to the applicant, on that part of the public land which, at the time of the issuance of the license or permit, is Federal range.

~~(ii) It shall not exceed the amount of forage needed for the proper support of the number of livestock creating such~~

2. Paragraph (k) (3) (ii) of § 161.2 is revised to read as follows:

(ii) It shall not exceed the amount of forage needed for the number of livestock creating such dependency by use that were customarily and properly sustained on the base property during the priority period and continue to use such property to the same extent, except that in no instance shall the use of base property be for less than the minimum period established under § 161.4.

The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that necessary for the proper support of the number of livestock used in creating the dependency by use (class 1) the base property, to the extent of such excess forage capacity, may be treated as dependent by location (class 2) if so qualified. 10/30/58

~~qualified.~~

(iii) Whenever the dependency by use of two or more base properties was created by the use of all or part of the same Federal range, during the same or at different seasons of the year, by two or more livestock operations, the relative dependency by use of each of the base properties shall be proportionate to the average annual use actually and properly made of the Federal range during the priority period by each of the livestock operations.

(l) "Land dependent by location" means forage land other than Federal range, which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(m) "Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by the grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under § 161.8 (b), the charge water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner specified in § 161.6. Provision will be made for other applicants so far as Federal range remains available.

(c) *Permits; annual licenses.* Grazing permits may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing, a recommendation thereon made by the advisory board, and approval thereof given by the range manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. The practice of issuing an annual license will be continued until such time as a permit is issued. Upon the issuance of a permit any outstanding license or part thereof which has been granted on the same qualifications on which the permit is based will terminate. Upon expiration of a term permit an annual license may be issued, pending issuance of a new term permit.

§ 161.2 *Definitions.* Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management in or pursuant to the Federal Range Code for Grazing Districts, unless the context otherwise requires:

(a) The "act" means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U. S. C. 315, 315a–315r), as amended and supplemented.

(b) "The Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) The "Secretary" means the Secretary of the Interior or his authorized agent.

(d) The "Director" means the Director of the Bureau of Land Management or his authorized agent.

(e) "State Supervisor" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(f) "Federal range" means land within established grazing districts administered by the Bureau of Land Management under the Federal Range Code for Grazing Districts, including the vacant, unappropriated, and unreserved public land of the United States chiefly valuable for grazing and forage crops; State, County, and privately-owned land leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land.

(g) "Property" means privately owned or controlled land or water used in range livestock operations.

(h) "Base property" means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a

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the production of natural or cultivated feed for livestock.

~~(k) (1) "Land dependent"~~ by use means forage land other than Federal range of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the "priority period", was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years

~~of such [illegible] vith substan[illegible] blic domain, now part of the Federal range. The priority period shall be the five-year period immediately preceding June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.~~

(2) No land shall be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year after the date when the Federal range used in creating the dependency by use first became a part of a grazing district, except that if the Federal range used in creating the dependency by use became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date. Only the last set of base properties used during the priority period by a livestock operation can be invested with dependency by use by such operation.

(3) The extent to which grazing licenses or permits will be granted on the basis of dependency by use of land, shall be governed by the following:

(i) It shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of any two consecutive years or any three years in which use was actually made during the priority period, whichever is more favorable to the applicant, on that part of the public land which, at the time of the issuance of the license or permit, is Federal range.

~~(ii) It shall not exceed the amount of forage needed for the proper support of the number of livestock creating such dependency by use which is available on the base property during the minimum period established under § 161.4.~~

~~The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that necessary for the proper support of the number of livestock used in creating the dependency by use (Class I) the base property, to the extent of such excess forage capacity, may be treated as dependent by location (Class II) if so qualified.~~

(iii) Whenever the dependency by use of two or more base properties was created by the use of all or part of the same Federal range, during the same or at different seasons of the year, by two or more livestock operations, the relative dependency by use of each of the base properties shall be proportionate to the average annual use actually and properly made of the Federal range during the priority period by each of the livestock operations.

(l) "Land dependent by location" means forage land other than Federal range, which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(m) "Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by the grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under § 161.8 (b), the charge for one horse grazing on the Federal range for one month shall be at twice the rate charged for one cow grazing for the same period.

(n) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(o) "Full-time water" means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(p) (1) "Prior water" is water which, during all or not less than two years of the priority period was used to service certain public domain now part of the Federal range for a livestock operation that was established, permanent, and continuing, and which, normally involved the grazing of livestock on the same areas of public land for a certain portion or portions of the years of such use. For the purpose of this definition the priority period shall be the five-year period immediately preceding June 28, 1934, except that in any area placed within a grazing district or added to an existing district by boundary modification after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) Where a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, have served to invest such water with the attribute of priority, but such livestock operation subsequently ceased using such water or waters and used other water or waters in such manner as to invest them, too, with priority, only the latter water or waters shall be considered as prior, unless the former are also prior because of use by another livestock operation.

(3) No water shall be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district except that when such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

(4) The extent to which grazing privileges will be granted on the basis of the priority of water shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of the years in which use was actually made during the priority period, on substantially that part of the public lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(q) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

* * * * *

(r) "Adjudication of grazing privileges" is the determination of the qualifications for grazing privileges of the base properties, land (§ 161.2(k) (1)) or water (§ 161.2(p) (1)), offered in support of applications for grazing licenses or permits in a range unit or area, and the subsequent equitable apportionment among the applicants of the forage production within the proper grazing season and capacity of the particular unit or area of Federal range, and acceptance by the applicants of the grazing privileges based upon the apportionment or its substantiation in a decision by an examiner, the Director, or the Secretary upon appeal. (Applicable provisions are §§ 161.1 to 161.5, inclusive; § 161.6 (a) and (b); § 161.6(e) (1) to (4), inclusive; § 161.6 (f); § 161.6(g); § 161.9 and § 161.10.)

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under the laws of the State in which the grazing privileges sought are to be exercised, and the controlling interest in which is vested in persons who would be qualified as individual applicants

under subparagraphs (1) or (2) of this paragraph.

(b) *Effect of transfer arising through operation of law.* The acquisition of rights in base property by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, based on such property, for a period of two years after such acquisition. Upon the failure of such person to qualify within the two year period the license or permit will be subject to cancellation in accordance with § 161.9 (d).

§ 161.4 *Minimum requirements; classification of base properties.* (a) The range manager, after recommendation by the advisory board, shall establish minimum base property requirements as a condition of qualification for the issuance of a license or permit in each district or unit thereof, taking into consideration the availability of base properties for proper use with and their relative dependence upon Federal range, land and water conditions, and other factors affecting livestock operations in the area according to customary use and best practices for good range management.

(b) The range manager after recommendation by the advisory board will classify base properties as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

§ 161.5 *Rating and classification of Federal range*—(a) *Grazing capacity, seasons and maximum annual period of use.* The range manager, after recommendation by the advisory board, will rate the grazing capacity of each unit or area in a grazing district and will classify each for the proper seasons of use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range therein during any one year.

(b) *Wildlife; allowance for maintenance.* In each grazing district a sufficient grazing capacity of Federal range suitable for wildlife will be reserved by the range manager after consulting with wildlife interests and the advisory board, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *Designation of ranges for particular kinds of livestock.* The range manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the Federal range.

(d) *Unit-wide or area-wide adjudication.* (1) The range manager, after recommendation by the advisory board, may make a simultaneous classification under § 161.4 of all offered base properties within a single administrative unit or grazing area and may allocate in a single action the available Federal range within the unit or area upon which such base properties are dependent.

(3)

3. Paragraph (d) (2) of § 161.5 is amended to read as follows:

§ 161.5 *Rating and classification of Federal range.* * * *

(d) *Unit-wide or area-wide adjudication.* * * *

(2) The district manager shall give written notice by registered mail[2] of such classification and allocation to the persons offering such base properties, naming a place and date not less than 30 days thereafter to file protest to the advisory board, in accordance with § 161.9 (b). Thereafter, and provided there is then pending a valid application for grazing privileges, the district manager will render his final decision thereon and will allow the right of appeal to the Examiner in accordance with § 161.10.

[2] Wherever registered mail is required in this part, certified mail may be used in lieu thereof in accordance with § 101 19 of this chapter.

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[1] Wherever registered mail is required in this part, Certified mail may be used in lieu thereof in accordance with § 101.19 of this chapter.

for one horse grazing on the Federal range for one month shall be at twice the rate charged for one cow grazing for the same period.

(n) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(o) "Full-time water" means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(p) (1) "Prior water" is water which, during all or not less than two years of the priority period was used to service certain public domain now part of the Federal range for a livestock operation that was established, permanent, and continuing, and which, normally involved the grazing of livestock on the same areas of public land for a certain portion or portions of the years of such use. For the purpose of this definition the priority period shall be the five-year period immediately preceding June 28, 1934, except that in any area placed within a grazing district or added to an existing district by boundary modification after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) Where a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, have served to invest such water with the attribute of priority, but such livestock operation subsequently ceased using such water or waters and used other water or waters in such manner as to invest them, too, with priority, only the latter water or waters shall be considered as prior, unless the former are also prior because of use by another livestock operation.

(3) No water shall be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district except that when such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

(4) The extent to which grazing privileges will be granted on the basis of the priority of water shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the
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§ 161.3 *Qualifications of applicants*—(a) *Qualifications.* An applicant for a grazing license or permit is qualified if engaged in the livestock business and:

(1) Is a citizen of the United States, or

(2) Has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen or a valid petition for naturalization, or

(3) Is a group, association, or corporation authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, and the controlling interest in which is vested in persons who would be qualified as individual applicants

under subparagraphs (1) or (2) of this paragraph.

(b) *Effect of transfer arising through operation of law.* The acquisition of rights in base property by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, based on such property, for a period of two years after such acquisition. Upon the failure of such person to qualify within the two year period the license or permit will be subject to cancellation in accordance with § 161.9 (d).

§ 161.4 *Minimum requirements; classification of base properties.* (a) The range manager, after recommendation by the advisory board, shall establish minimum base property requirements as a condition of qualification for the issuance of a license or permit in each district or unit thereof, taking into consideration the availability of base properties for proper use with and their relative dependence upon Federal range, land and water conditions, and other factors affecting livestock operations in the area according to customary use and best practices for good range management.

(b) The range manager after recommendation by the advisory board will classify base properties as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

§ 161.5 *Rating and classification of Federal range*—(a) *Grazing capacity; seasons and maximum annual period of use.* The range manager, after recommendation by the advisory board, will rate the grazing capacity of each unit or area in a grazing district and will classify each for the proper seasons of use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range therein during any one year.

(b) *Wildlife; allowance for maine nance.* In each grazing district a su cient grazing capacity of Federal ran suitable for wildlife will be reserved the range manager after consulting wi wildlife interests and the advisory board, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *Designation of ranges for particular kinds of livestock.* The range manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the

(d) lica- *tion.* ter recom oard, may n ation under oper- ties w unit or gr in a single range withi such base

value of the forage consumed in trespass and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provision of the act or of the Federal Range Code for Grazing Districts in the amount of $2,000 or less may be accepted by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Supervisor for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for the consumed forage and damage involved until finally accepted by the district manager or the State Supervisor, and in no event will

der this section has been offered.

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to

[2] Any grazing on the Federal range within grazing districts in the absence of effective

~~(2 give writt l[1] of such classification to the persons offering such base properties, and allow them 30 days from receipt of the written notice to file protest to the Advisory Board, in accordance with § 161.9 (b). Thereafter, and provided there is then pending a valid application for grazing privileges, the range manager will render his final decision thereon and will allow the right of appeal to the Examiner in accordance with § 161.10.~~

(3) (e) *Diminution of available Federal range.* Federal range lands to be used

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[1] Wherever registered mail is required in this part, Certified mail may be used in lieu thereof in accordance with § 101.19 of this chapter.

under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of a pending or proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with § 296.3 of this chapter, and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Part 221 of this chapter.

§ 161.6 *Issuance of licenses and permits.* Licenses or permits will be issued in the following order:

12/11/42
M-2551
Sec. 6 (a)A

(a) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(b) *Regular licenses and permits; number of livestock.* (1) Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

(2) Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license or permit may, upon written approval of the range manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(i) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(ii) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(iii) Such use will not be detrimental to the Federal range, and

(iv) Such use will not adversely affect other licensees or permittees.

(c) *Exchange of the use licenses.* Exchange of use licenses may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land, without payment of grazing fees, provided that during the term of the license the Bureau shall have the management and control of such non-Federal land for grazing purposes.

4. Paragraph (d) of § 161.6 is amended to read as follows:

§ 161.6 *Issuance of licenses and permits.* * * *

(d) *Nonrenewable licenses.* Nonrenewable licenses may be issued to nonpreference applicants only for the period specified by the district manager and for the number of livestock for which range is temporarily available and which can be properly grazed without detriment to the operations regularly authorized on the basis of properties in class 1 and class 2.

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regular licensees and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation.

(2) No license or permit will provide for the grazing livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the grazing capacity of the Federal range to be used, as determined by the district manager, except as may be allowed under paragraph (f) (3) and (5) of this section. 10/27-61

will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(6) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately to the reduction in available grazing capacity caused by the loss of such Federal range.

(e) *Terms and conditions.* * * *

(7) If a licensee or permittee for two consecutive years ceases to make substantial use of his base property in connection with his year-round livestock operation, the authorized use under such license or permit and the qualifications of the base property may be subject to reduction in proportion to the diminished use of the base property. 10/30/58

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(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the range manager; except that, if the licensee or permittee notifies the range manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the range manager shall determine; or

(ii) All or part of such other lands or grazing privileges as are necessary to his year round operation, the license or permit will be subject to reduction in proportion to the loss of such necessary
rivileges unless the
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ownership or control of other lands or grazing privileges sufficient to assure a year-round operation.

~~(9) Class I base property qualifications in whole or in part, will be lost~~

(9) Base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To offer base property which is not covered by an outstanding current term permit to the full extent of its qualification in an application for a license or permit or renewal thereof, or to apply for nonuse thereof in whole or ~~in part~~ or

(ii) To accept a license or permit issued pursuant to such application. 10/30/58

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(10) The failure for any two consecutive years to make substantial use as determined by the range manager after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Non-use, in whole or in part, of grazing privileges under a license or permit may be authorized by the range manager, upon application by the licensee or permittee, after reference to the advisory board, for the following

under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of pending or proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with § 296.3 of this chapter, and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Part 221 of this chapter.

§ 161.6 *Issuance of licenses and permits.* Licenses or permits will be issued in the following order:

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Sec. 6 TGA.

(a) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(b) *Regular licenses and permits; number of livestock.* (1) Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

(2) Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license or permit may, upon written approval of the range manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(i) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(ii) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(iii) Such use will not be detrimental to the Federal range, and

(iv) Such use will not adversely affect other licensees or permittees.

(c) *Exchange of the use licenses.* Exchange of use licenses may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land with
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sions (i) and (ii) of this subparagraph
in accordance with the provisions of
§ 161.9 (d).

6. Paragraph (a) (1) of § 161.7 is amended to read as follows:

§ 161.7 *Transfers of base property;*
base property qualifications; relinquish-
ments—(a) *Transfer of base property;*
affect. (1) A transfer of a base property
or part thereof, whether by agreement,
or testamentary dis-
operation of law,

(e) *Terms and conditions.* The issuance and continued effectiveness of all

regular licensees and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation

(3) No license or permit will confer grazi… graz- ing c… to be used.

(3) No license or permit will confer grazing privileges in excess of the grazing capacity of the Federal range to be used, as determined by the district manager, except as may be allowed under paragraph (f)(3) of this section.

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(4) … proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(6) … the diminution of the Federal r… used under any license or pe… drawal, appropriation … the license or … portion- a… graz- i… such Federal ra…

without further notice shall automatically be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property; except that further grazing under the license or permit may be temporarily extended pursuant to request and notification filed in accordance with § 161.6 (e) (8) (i).

~~(7) If a licensee~~ … ~~ases to make substantial use of his~~ … ~~e property in connection with his year-round livestock operation, the authorized use under such license or permit will be subject to reduction in proportion to the diminished use of the base property.~~

(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the range manager; except that, if the licensee or permittee notifies the range manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the … ll determine; or … such other lands or … are necessary to his … n, the license or per- … to reduction in pro- … of such necessary lands or grazing privileges unless the licensee or permittee notifies the range manager within 30 days after such loss and thereafter within the time allowed by the range manager after recommendation by the Advisory Board acquires ownership or control of other lands or grazing privileges sufficient to assure a year-round operation.

~~(9) Class I base property qualifications in whole or in part, will be lost~~ up… …cutive ye… … is not co… … term pe… …lifica- tio… …nse or pe… …ply for no… …part or

(9) Base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To offer base property which is not covered by an outstanding current term permit to the full extent of its qualification in an application for a license or permit or renewal thereof, or to apply for nonuse thereof in whole or in part or

(ii) To accept a license or permit issued pursuant to such application. 10/30/58

~~(ii) To accept a license or permit issued pursuant to such application.~~

Reword

(10) The failure for any two consecutive years to make substantial use as determined by the range manager after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Non-use, in whole or in part, of grazing privileges under a license or permit may be authorized by the range manager, upon application by the licensee or permittee, after reference to the advisory board, for the following

under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of , pending or proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with § 296.3 of this chapter, and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Part 221 of this chapter.

§ 161.6 *Issuance of licenses and permits.* Licenses or permits will be issued in the following order:

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(a) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(b) *Regular licenses and permits; number of livestock.* (1) Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

(2) Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license or permit may, upon written approval of the range manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(i) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(ii) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(iii) Such use will not be detrimental to the Federal range, and

(iv) Such use will not adversely affect other licensees or permittees.

(c) *Exchange of the use licenses.* Exchange of use licenses may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land with f grazing term of ave the ch non- es.

Non-re- n o non- p period sp by the range manager and for the number of livestock for which range is temporarily available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

sions (i) and (ii) of this subsection
in accordance with the provisions of
§ 161.9 (d).

6. Paragraph (a) (1) of § 161.7 is amended to read as follows:

§ 161.7 *Transfers of base property; base property qualifications; relinquishments*—(a) *Transfer of base property; affect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary dis-

(e) *Terms and conditions.* The issuance and continued effectiveness of all

regular licensees and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation

(3) [illegible] nfer grazing privileges in excess of the grazing capacity of the Federal range to be used.

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(6) [illegible] the diminution of the Federal r [illegible] used under any license or pe [illegible] drawal, appropriation [illegible] the license [illegible] portion- or [illegible] a [illegible] raz- in [illegible] such Federal ra [illegible]

~~(7) If a licensee~~ [illegible] ~~ases to make substantial use of his~~ [illegible] ~~e property in connection with his year-round livestock operation, the authorized use under such license or permit will be subject to reduction in proportion to the diminished use of the base property.~~

(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the range manager; except that, if the licensee or permittee notifies the range manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the [illegible] ll determine; or

[illegible] such other lands or [illegible] are necessary to his [illegible] n, the license or per- [illegible] to reduction in pro- [illegible] of such necessary lands or grazing privileges unless the licensee or permittee noti [illegible] the range manager within 30 [illegible] such loss and therea [illegible] e allowed by th [illegible] commen- [illegible] acquires [illegible] lands or [illegible] ssure a [illegible] fica- ti [illegible] part, will be lost u [illegible] failure for any two consecutive years:

~~(i) To offer base property which is not covered by an outstanding current term permit to the full extent of its qualification in an application for a license or permit or renewal thereof, or to apply for non-use thereof in whole or in part or~~

~~(ii) To accept a license or permit issued pursuant to such application.~~

(10) The failure for any two consecutive years to make substantial use as determined by the range manager after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Non-use, in whole or in part, of grazing privileges under a license or permit may be authorized by the range manager, upon application by the licensee or permittee, after reference to the advisory board, for the following

7. Paragraphs [illegible] are amended to read as follows:

§ 161.8 *Fees; time of payment; refunds.* * * *

(c) *Crossing permits.* Upon application filed with the district manager by any person showing the necessity for crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents

(e) (8) (i) [illegible] shall automatically without further notice be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property; except that further grazing under the license or permit may be temporarily extended pursuant to request and notification filed in accordance with § 161.6

reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

~~(12) A revocation of a license or per-~~

* * * * *

(12) A revocation of a license or permit in whole or in part may result in a proportionate loss of the base property qualifications supporting such license or permit.

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(13) (i) No readjudication of any license or permit, including free use license, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

(13) * * *

(ii) The Bureau of Land Management may make adjustments in licenses and permits at any time when necessary to comply with the Federal Range Code for Grazing Districts.

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(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the range manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s), as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

~~(ii) May require any licensee or per-~~

(14) * * *

(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or upon their failure to agree, by determination of the district manager.

10/30/58

(iii) May take necessary action to enforce the requirements under subdivisions (i) and (ii) of this subparagraph, in accordance with the provisions of § 161.9 (d).

~~Any necessary enforcement action under this subparagraph will be taken in accordance with § 161.9 (d).~~

(f) *Reduction.* (1) If necessary to reach the grazing capacity of any area of the Federal range after licenses or permits have been issued, reductions of grazing privileges applicable to such area shall be made in the following order:

(i) Non-renewable licenses.

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(ii) Regular licenses or permits to the extent, if any, to which they are in excess of the base property qualifications or have been otherwise improperly issued.

(iii) Regular licenses or permits properly issued, on an equal percentage basis.

(2) Such reductions may be made either by reducing the number of livestock or the time on the Federal range involved or by both methods as determined by the range manager after recommendation by the Advisory Board.

(3) When the district manager, after recommendation by the advisory board, determines that the imposition of the full amount of certain reductions in grazing privileges from current licensed or permitted use necessary to reach the grazing capacity of a range area would impose a serious hardship on the range users, he is not required to impose the full amount of the reduction forthwith, but will then schedule a percentage of the required reduction during each of the three years immediately following the determination as the circumstances of each case may warrant, except when the total reduction is less than fifteen percent it may not be so scheduled but will be imposed forthwith in the full amount.

(4) The district manager will notify each affected licensee or permittee by certified mail of his decision to make a reduction in grazing privileges to reach the grazing capacity of any Federal range area and of the manner in which the reduction is to be made. The district manager's decision notice will allow thirty days from receipt thereof in which to file any desired appeal in accordance with § 161.10 of this part. If no appeal is filed within the thirty-day period, the reduction will be made in accordance with the district manager's decision, and no further appeal will be allowed even though the reduction may be scheduled under subparagraph (3) of this paragraph to cover a period of time up to three years. If any timely appeal is filed after receipt of the district manager's decision notice, the reduction for the entire Federal range area under consideration will be deferred pending the completion of the appeal and hearing procedure.

161.6(f)(4) Cont.

Any reduction provided by the ultimate decision will be applied to its full extent immediately after the effective date of that decision. If, however, the final decision on appeal is rendered within the three-year reduction period established by the decision notice of the district manager, the required adjustment may be apportioned over the remaining portion of that period. In the event that the orderly administration of the range or other public interest so requires, any decision may be placed in full force and effect in accordance with the provisions of § 161.10(i)(2).

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file with the range manager an application, in duplicate, setting forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the range man-

(f) Reduction.
(5) When the district manager determines that the potential grazing capacity, with improvements, of a Federal range area is significantly greater than the present grazing capacity, he may, after obtaining advice from the advisory board, issue a current license for active use not to exceed the animal unit months of forage presently available, and issue a non-use license for the difference between the use allowable by the limits of the present grazing capacity and the potential. This difference will be held in a suspense status as reflected in the non-use portion of the license, provided that the aggregate of active and non-use privileges shall not exceed the extent of the base property qualifications of the licensee or permittee. Thereafter, when the district manager determines that a significant portion of the potential grazing capacity has been attained, he may increase the active authorized use under the license or permit to that extent.

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term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act, 43 U. S. C., 1952 ed., sec. 315 (h)).

(i) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101 (1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U. S. C. War Appendix, 511 (1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall

suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, or otherwise, such temporary license shall terminate as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the range manager on an application for suspension of a license or permit under this paragraph may be appealed by the li-

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per head per day for horses, and one-
fifth cent per head per day for sheep
and goats. A minimum charge of $5 will
be made for each crossing permit, except
that no fee will be charged where the
trail to be used is so limited and defined
that no substantial amount of forage

~~(12) A revocation of a license or permit in whole or in part may result in a proportionate loss of the class I or class II base property qualifications, as the case may be.~~

(13) (i) No readjudication of any license or permit, including free use license, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

section 10 of the Stockraising Homestead
Act of December 29, 1916 (39 Stat. 862;
43 U. S. C. 300).

~~(i[illegible]ement ma[illegible]t any time when necessary to comply with the Federal Range Code for Grazing Districts.~~

(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the range manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s), as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

~~(ii) May require any licensee or per-~~mit[illegible]bstantial[illegible]struction, a[illegible]of an existi[illegible]o pay or to r[illegible]f the cost[illegible]and maint[illegible]hare may [illegible]f the partie[illegible]gree, by de[illegible]ager.

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(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the district manager.

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(iii) May take necessary action to enforce the requirements under subdivisions (i) and (ii) of this subparagraph, in accordance with the provisions of § 161.9 (d).

~~Any necessary enforcement action under this subparagraph will be taken in accordance with § 161.9 (d).~~

(f) *Reduction.* (1) If necessary to reach the grazing capacity of any area of the Federal range after licenses or permits have been issued, reductions of grazing privileges applicable to such are[illegible]owing ord[illegible]

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~~(ii) Regular licenses or permits to the extent, if any, to which they have been issued in excess of the base property qualification.~~

(iii) Regular licenses or permits properly issued, on an equal percentage basis.

(2) Such reductions may be made either by reducing the number of livestock or the time on the Federal range involved or by both methods as determined by the range manager after recommendation by the Advisory Board.

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(h) [illegible]*additionally a*[illegible]*for lands restor*[illegible]Any land withi[illegible]f a grazing di[illegible]administratio[illegible]Management,[illegible]ce Act of June [illegible] U. S. C. 315m-[illegible]tion of a withd[illegible]ation or relinq[illegible]entry or claim,[illegible]grazing privileges in the area embracing the

(3) When the district manager, after recommendation by the advisory board, determines that the imposition of the full amount of certain reductions in grazing privileges from current licensed or permitted use necessary to reach the grazing capacity of a range area would impose a serious hardship on the range users, he is not required to impose the full amount of the reduction forthwith, but will then schedule a percentage of the required reduction during each of the three years immediately following the determination as the circumstances of each case may warrant, except when the total reduction is less than fifteen percent it may not be so scheduled but will be imposed forthwith in the full amount.

(4) The district manager will notify each affected licensee or permittee by certified mail of his decision to make a reduction in grazing privileges to reach the grazing capacity of any Federal range area and of the manner in which the reduction is to be made. The district manager's decision notice will allow thirty days from receipt thereof in which to file any desired appeal in accordance with § 161.10 of this part. If no appeal is filed within the thirty-day period, the reduction will be made in accordance with the district manager's decision, and no further appeal will be allowed even though the reduction may be scheduled under subparagraph (3) of this paragraph to cover a period of time up to three years. If any timely appeal is filed after receipt of the district manager's decision notice, the reduction for the entire Federal range area under consideration will be deferred pending the completion of the appeal and hearing procedure.

land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management.

(2) Where public lands are restored from withdrawal and the range manager determines that the lands are available for grazing use, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to their restoration, shall have a superior preference to the further grazing use of such lands. The preference right must be asserted and an application for license or permit, on Form 4-1283 obtainable from the range manager, must be filed with that officer not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The range manager may issue to such applicant an annual license or a term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act, 43 U. S. C., 1952 ed., sec. 315 (h)).

(i) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101 (1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U. S. C. War Appendix, 511 (1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the range manager an application, in duplicate, setting forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the range manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner terminated upon further application to the range manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for not to exceed the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, or otherwise, such temporary license shall terminate as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the range manager on an application for suspension of a license or permit under this paragraph may be appealed by the li-

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~~(12) A revocation of a license or permit in whole or in part may result in a proportionate loss of the class I or class II base property qualifications, as the case may be.~~

(13) (i) No readjudication of any license or permit, including free use license, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

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~~time when necessary to comply with the Federal Range Code for Grazing Districts.~~

(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the range manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s), as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

~~(ii) May require any licensee or per-~~
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(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the district manager.

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(iii) May take necessary action to enforce the requirements under subdivisions (i) and (ii) of this subparagraph, in accordance with the provisions of § 161.9 (d).

~~Any necessary enforcement action under this subparagraph will be taken in accordance with § 161.9 (d).~~

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will be made to licensees or permittees when conditions warrant. Division of the range by private agreement or former practice will be followed where practicable provided such agreement is reduced to writing and approved by the range manager. Increases in grazing capacity will be participated in by existing preference licensees and permittees to the extent of and in proportion to their respective qualifications.

(h) *Administration of lands additionally available; preference right for lands restored from withdrawal.* (1) Any land within the exterior boundaries of a grazing district made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U. S. C. 315m–1–315m–4), by the revocation of a withdrawal, or by the cancellation or relinquishment of a homestead entry or claim, or otherwise, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management.

(2) Where public lands are restored from withdrawal and the range manager determines that the lands are available for grazing use, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to their restoration, shall have a superior preference to the further grazing use of such lands. The preference right must be asserted and an application for license or permit, on Form 4–1283 obtainable from the range manager, must be filed with that officer not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The range manager may issue to such applicant an annual license or a term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act, 43 U. S. C., 1952 ed., sec. 315 (h)).

(i) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101 (1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U. S. C. War Appendix, 511 (1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the range manager an application, in duplicate, setting forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the range manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner terminated upon further application to the range manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for not to exceed the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, or otherwise, such temporary license shall terminate as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the range manager on an application for suspension of a license or permit under this paragraph may be appealed by the li-

censee or permittee to the Director, and from the Director to the Secretary of the Interior, in accordance with the rules of practice, Part 221 of this chapter.

(j) *Interest of Member of Congress prohibited.* No Member of or Delegate to Congress shall be admitted to any share or part of any license or permit issued under the Act, or to derive any benefit to arise therefrom. (41 U. S. C., sec. 22; 18 U. S. C., secs. 431–433.)

CROSS REFERENCE: For prohibitions against interests of Interior Department employees, see Part 7 of this chapter.

§ 161.7 *Transfers of base property; base property qualifications; relinquishments*—(a) *Transfer of base property; effect*
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6 Paragraph (a) (1) of § 161.7 is amended to read as follows:

§ 161.7 *Transfers of base property; base property qualifications; relinquishments*—(a) *Transfer of base property; affect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if qualified under § 161.3 (a), to so much of the grazing privileges as are based thereon. In any event, the existing license or permit and the grazing privileges thereunder shall automatically and without further notice be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property; except that further grazing under the license or permit may be temporarily extended pursuant to request and notification filed in accordance with § 161.6 (e) (8) (i).

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(b) *Transfer of base property qualifications; limitations; consent of owner or encumberancer; effect.* (1) A licensee or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 161.3 (a). An application for approval of a transfer shall be filed with the range manager on Form 4–1284 as to land base, or on Form 4–1285 as to water base. Transfer of base property qualifications may be made under the following conditions:

(i) When an applicant owns or controls base land or lands having a forage production in excess of that required to support the licensed or permitted livestock, the qualifications may be concentrated on that part of the property having the forage production required by and which will continue to be used for the support of such livestock.

(ii) When such qualifications are to be transferred from land owned or controlled by the applicant, to land owned or controlled by others, the transfer will be recognized only to the extent such qualifications do not exceed the forage production of the new base property.

(iii) When an applicant owns or controls base water, the qualifications may be transferred to another adequate water source which will service the same range area.

(3) No transfer will be allowed under this paragraph if it interferes with the stability of livestock operations or proper range management, or adversely affects the local economy. No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made, except that in an application for transfer of Class 1 qualifications where the applicant for such transfer is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established,

such consent will not be required. Upon approval of the application by the range manager after reference to the advisory board, the transfer shall be effective as of the date of filing of the application, and the base property from which the transfer is made will thereupon lose its qualifications to the extent indicated in the transfer.

(c) *Relinquishment of base property qualifications; limitation; effect.* Upon request of a licensee or permittee, the range manager may accept a relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified, provided that no such relinquishment will be accepted without the written consent of the owner or owners, if other than the licensee or permittee, and any encumbrancer of the base property, except that if the licensee or permittee is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

§ 161.8 *Fees; time of payment; refunds*—(a) *Free-use licenses.* No fee will be charged for the issuance of a free-use license.

(b) *Licenses and permits.* Each regular licensee or permittee, and holder of a non-renewable license will be charged fees, consisting of a grazing fee for the use of the range and a range improvement fee, as established from time to time, for the animal unit months authorized by the license or permit. All livestock six months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No fees will be charged for livestock under six months of age. Range improvement fees, upon the recommendation of the advisory board and approval of the Director, may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any State or Federal agency, or any person, association, or corporation. A minimum annual charge of $1 will be made on all regular licenses or permits, and non-renewable licenses.

NOTE: In accordance with § 161.8 (b) of the Federal Range Code for Grazing Districts (19 F. R. 8958, December 23, 1954) and pursuant to the act of June 28, 1934 (48 Stat. 1275), as amended, notice is hereby given that effective January 1, 1956, fees for grazing privileges (equivalent to 15 cents per animal unit month) will be charged each regular licensee or permittee, and every holder of a non-renewable license, for the period covered by the license or permit, as follows: 15 cents per cow per month; 30 cents per horse per month; 3 cents per sheep or goat per month. Seventy-five percent of the total fee will be a grazing fee and twenty-five percent will be a range improvement fee.

This revised basis for computing the grazing and range improvement fees will become effective with all payments received on and after January 1, 1956.

§ 161.8 *Fees; time of payment; refunds.* * * *

(c) *Crossing permits.* Upon application filed with the district manager by any person showing the necessity for crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $5 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit, or to the extent the crossing permit involves the use of a stock driveway created under section 10 of the Stockraising Homestead Act of December 29, 1916 (39 Stat. 862; 43 U. S. C. 300). 10/30/58

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(2) A transferee shall, within 90 days from the date of transfer, file with the range manager documentary evidence of the transfer and an application on Form 4–1283 for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred. Where, however, a transfer, or a different vesting in any manner, of a leasehold interest in land or water may result in interference with the stability of livestock operations or with proper range management, upon a finding to that effect by the range manager, after reference to the advisory board, such land or water will lose its base property qualifications and grazing privileges based thereon will be denied.

(b) *Transfer of base property qualifications; limitations; consent of owner or encumberancer; effect.* (1) A licensee or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 161.3 (a). An application for approval of a transfer shall be filed with the range manager on Form 4–1284 as to land base, or on Form 4–1285 as to water base. Transfer of base property qualifications may be made under the following conditions:

(i) When an applicant owns or controls base land or lands having a forage production in excess of that required to support the licensed or permitted livestock, the qualifications may be concentrated on that part of the property having the forage production required by and which will continue to be used for the support of such livestock.

(ii) When such qualifications are to be transferred from land owned or controlled by the applicant, to land owned or controlled by others, the transfer will be recognized only to the extent such qualifications do not exceed the forage production of the new base property.

(iii) When an applicant owns or controls base water, the qualifications may be transferred to another adequate water source which will service the same range area.

(3) No transfer will be allowed under this paragraph if it interferes with the stability of livestock operations or proper range management, or adversely affects the local economy. No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made, except that in an application for transfer of Class 1 qualifications where the applicant for such transfer is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established,

such consent will not be required. Upon approval of the application by the range manager after reference to the advisory board, the transfer shall be effective as of the date of filing of the application, and the base property from which the transfer is made will thereupon lose its qualifications to the extent indicated in the transfer.

(c) *Relinquishment of base property qualifications; limitation; effect.* Upon request of a licensee or permittee, the range manager may accept a relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified, provided that no such relinquishment will be accepted without the written consent of the owner or owners, if other than the licensee or permittee, and any encumbrancer of the base property, except that if the licensee or permittee is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

§ 161.8 *Fees; time of payment; refunds*—(a) *Free-use licenses.* No fee will be charged for the issuance of a free-use license.

(b) *Licenses and permits.* Each regular licensee or permittee, and holder of a non-renewable license will be charged fees, consisting of a grazing fee for the use of the range and a range improvement fee, as established from time to time, for the animal unit months authorized by the license or permit. All livestock six months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No fees will be charged for livestock under six months of age. Range improvement fees, upon the recommendation of the advisory board and approval of the Director, may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any State or Federal agency, or any person, association, or corporation. A minimum annual charge of $1 will be made on all regular licenses or permits, and non-renewable licenses.

NOTE: In accordance with § 161.8 (b) of the Federal Range Code for Grazing Districts (19 F. R. 8958, December 23, 1954) and pursuant t[illegible] Stat. 1275), [illegible] given that eff[illegible] grazing pri[illegible] s per animal [illegible] each regular [illegible] every holder [illegible] r the period [illegible] it, as follows [illegible] h; 30 cents p[illegible] sheep or goat [illegible] nt of the tot[illegible] enty-five pe[illegible] t fee.

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~~(c) *Crossing permits.* Upon application filed with the range manager by any person showing the necessity for crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, 2 cents per head per day for horses, and one-fifth cent per head per day for sheep and goats; except that no fee will be charged where the trail to be used in so limited and defined that no substantial amount of forage will~~

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(d) *Payment of fees; reduction or increase in numbers; modification of periods of use.* No license or permit shall be issued or renewed until payment of all fees due the United States under the Federal Range Code for Grazing Districts has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice and are payable at least 15 days in advance of the first grazing period and for the full amount indicated on the fee notice; no license or permit shall be effective to authorize grazing use thereunder until such advance payment has been made.[2] A permit may be canceled or reduced pursuant to § 161.9 (d) for failure to pay the fee in accordance with the fee notice. Any licensee or permittee who desires to make temporary use of the grazing privileges during any authorized grazing period or periods in a manner other than that authorized in his existing license or permit must file with the district manager a written request for such change in use at least 30 days prior to the beginning of any such grazing period. If the district manager approves the request he will issue an adjusted fee notice accordingly.

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(e) *Refunds.* No refund of fees properly paid will be made because of an unauthorized failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(1) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Director may in his discretion credit, remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period so long as the emergency exists.

(2) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be filed with the range manager under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U. S. C. 95, et seq.), or such excess fees may be credited on subsequent fee notices.

§ 161.9 *Procedure in applications; protests*—(a) *Filing and consideration of applications; inter-district agreements; recommendations; service of notice.* (1) Each year a date will be set by the range manager prior to which all applications[3] for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) Applications for grazing licenses or permits will be considered first by the advisory board of the district in which the Federal range is located, except that applications of district advisers will be considered first by the range manager, without reference to the advisory board.

(3) Where a grazing area or unit is located in one district, but is administered by the range manager of an adjacent district pursuant to a formal inter-district agreement, applications for grazing licenses or permits on such area or unit shall be filed with the range

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[2] Any grazing on the Federal range within grazing districts in the absence of effective license or permit is unlawful and prohibited; such unauthorized grazing shall be deemed in trespass and may be proceeded against as provided in § 161.12, or by other action under the law.

[3] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the range manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the range manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable, the range manager will notify the applicant by ordinary mail. If the recommendation is to any extent adverse, notice will be served on the applicant in person or by registered letter sent to his address of record, setting out the reason or reasons given by the advisory board for the adverse recommendations including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a place and date, not less than ten days thereafter, when protests against the recommendation will be heard. In any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may decide that a protest meeting be not held; whereupon, the range manager shall act upon the recommendation of the board as its final recommendation.

(b) *Protests; reconsideration by advisory board; service of notice.* At the time and place fixed for the protest meeting, any licensee, permittee, or applicant may appear, in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the range manager. If such recommendation is favorable to the applicant, and the range manager approves, he will notify the applicant thereof by ordinary mail. If the recommendation is to any extent adverse, and the range manager approves, a notice giving the reason or reasons therefor will be served on the applicant in person or by registered mail, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient. Such notice will constitute the range manager's final decision for purposes of appeal.

(c) *Allowance or rejection of application; modification; service of notice.* The range manager, in the light of all facts and circumstances and after reference to the advisory board, may issue or refuse to issue a grazing license or permit. If the action taken by the range manager on any application is substantially different from that recommended by the advisory board, a notice including a recital of the specific reasons for the action taken will be served on the applicant and on any other applicant or applicants adversely affected by such action, in person or by registered mail. The notice will advise each applicant of his privilege to appeal to an examiner.

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of § 161.3 (b), § 161.6 (e), § 161.8 (d), § 161.14 (d) or § 161.15 (f). Except as otherwise specifically provided, in any such case or in any case in which it shall appear that a license or permit confers grazing privileges in excess of those properly allowable under the Federal Range Code for Grazing Districts, the range manager will notify the licensee or permittee that the license or permit is thereby held for cancellation or reduction either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such action should not be made final. Such notice will set forth fully the reasons for the proposed action, specifically referring to the pertinent provisions of the Federal Range Code for Grazing Districts, and will be served on the licensee or permittee by registered mail or in person. In case of failure of the licensee or permittee to show cause within the time allowed, the license or permit will be canceled or reduced to the extent indicated in the notice. The range manager will consider any cause shown and, if satisfied of its sufficiency, will close the case; if not satisfied as to its sufficiency, or if no cause is shown, he will notify the licensee or permittee in person or by registered mail that the cancellation or reduction will become final unless an appeal to the examiner is filed in accordance with § 161.10 (a).

§ 161.10 *Appeals and hearings*—(a) *Appeal to examiner; motion to dismiss.* (1) Any applicant whose interest is adversely affected by a final decision of the range manager may appeal to an examiner by filing his appeal in the office of the range manager within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the decision of the range manager is in error. All grounds of error not stated will be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the examiner.

(2) When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(3) The range manager will promptly forward the appeal to the State Supervisor. Within thirty days after his receipt of the appeal, the State Supervisor may file on behalf of the range manager a written motion, serving a copy thereof upon the appellant, requesting that the appeal be dismissed for the reason that it is frivolous, the appeal was filed late, the errors are not clearly and concisely stated, the issues are immaterial, or all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The appellant may file a written answer within twenty days after service of the motion upon him. The appeal, motion, the proofs of service, and the answers will be transmitted to the examiner, who shall rule on the motion, and, if the motion is sustained, dismiss the appeal by written order.

(b) *Time and place of hearing; notice; intervenors.* At least thirty days before the date set the range manger will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the range manager may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the examiner as an intervenor in the appeal.

(c) *Authority of examiner; subpoenas; depositions; continuances; witness fees.* (1) The examiner is vested with the duty and general authority to conduct the hearing in an orderly, impartial and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a decision. The examiner shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by Parts 221 and 223 of this chapter, to the extent such regulations are applicable.

(2) The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with the rules of practice (Part 221 of this chapter), and when the ends of justice will be served thereby. Continuances will not be granted unless they are clearly justified and timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the range manager and on other parties. The range manager and other parties shall have five days from receipt of the request to file objection to the continuance. The examiner will then rule on the request, and, if granted, set a new date for the hearing. The range manager will notify all interested persons of the new date.

(d) *Conduct of hearing before examiner.* (1) The appellant, the state supervisor or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented. Issues which appear to the examiner to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the state supervisor or his representative, unless the examiner rules that such issue is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties.

(2) Unless the examiner orders otherwise, the state supervisor or his representative will then make the opening statement, setting forth the facts leading to the appeal (or issuance of the show cause order where that is involved). Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the examiner, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under the Federal Range Code for Grazing Districts as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the examiner.

(3) In the absence or upon denial of such motion the State Supervisor or his representative and recognized intervenors may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every

ruling of the examiner will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the opposing party may then make an offer of proof in rebuttal. The examiner will summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

(e) *Findings of fact and decision by examiner; notice; submission to Director for decision.* (1) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law unless waiver has been stipulated, and will render a decision upon all material issues of fact and law presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any further appeal. A copy of the decision shall be sent by registered mail to the appellant and all intervenors, or their attorneys of record.

(2) The Director may require, in any designated case, that the examiner make only a recommended decision and that such decision and the record be submitted to the Dierctor for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by the rules of practice (Part 221 of this chapter).

(f) *Notice of appeal to the Director; furnishing copies of the transcript.* Within ten days after the receipt of the decision of the examiner any party, including state supervisor or his representative, desiring to appeal to the Director shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the state supervisor without charge, and to other appellants and to the intervenors, at a charge of ten cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervenor is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed through the office of the Hearing Examiner.

(g) *Appeals to the Director.* An appeal from any decision of the examiner shall be filed in the office of the Director, Bureau of Land Management, Washington 25, D. C., together with any brief in support thereof, within thirty days after date of receipt of the transcript of testimony, or, if the transcript is not requested, within thirty days after receipt of the examiner's decision. A copy of the appeal and of any brief must be served on each party, including the State supervisor either personally or by registered mail. Any party, including the State supervisor, opposing the appeal, will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in the office of the Director a reply brief, a copy of which must be served upon the appellant in the same manner. The appeal in other respects shall be made in accordance with the rules of practice (Part 221 of this chapter).

(h) *Appeals to the Secretary of the Interior.* An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with the rules of practice (Part 221 of this chapter).

(i) *Effect of decision suspended during appeal.* (1) An appeal shall suspend the effect of the decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing privileges to be granted under the current application, an appellant who was granted grazing privileges in the preceding year may continue to use such privileges pending final action on the appeal, unless the decision appealed from is made immediately effective, as herein next provided.

(2) When the orderly administration of the range or other public interest so requires, (i) the range manager may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (ii) the examiner or the Director may provide in the decision on an appeal before such officer, that it shall be in full force and effect pending decision on any further appeal; (iii) the Director or the Secretary may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the range manager pursuant to a decision shall be subject to modification or revocation by the Examiner, Director, or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under sec. 10 (c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

(j) *Record as basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the state supervisor and as supported by and in accordance with the reliable, probative and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

(k) *Notice and proof of service.* Any notice or other ~~papers~~ required to be served under this section shall be served in person or by registered mail sent to the last address of record, and proof of service furnished. Proof of service shall consist of the affidavit of the person making the personal service, signed acknowledgement of the person served, or the registry return receipt.

(l) *Effect of substantial compliance.* No adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts.

§ 161.11 *General Rules of the range*—(a) *Acts prohibited.* The following acts are prohibited on the Federal range:

(1) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across the Federal range, in-

cluding stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(2) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(3) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(4) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(5) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authroized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the range manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(6) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(7) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

(b) *Rules of fair range practice.* All licensees and permittees shall comply with the following rules of fair range practice:

(1) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating to the branding of livestock and sanitary requirements shall be followed.

(2) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the range manager.

(3) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the range manager. Upon request by the majority of the users of any community allotment of Federal range, the range manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

§ 161.11 *General rules of the range.* * * *

(b) *Rules of fair range practice.* * * *

(4) When so requested by the State Supervisor or district manager, the licensee or permittee shall join with the Bureau of Land Management in preparing a fire plan which shall set forth in detail the program for prevention, control, and extinguishment of fires, including the responsibility of the licensee or permittee for action on his range allotment and on adjacent Federal range.

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(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the range manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the range manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of the Federal Range Code for Grazing

Districts or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the range manager he will close the case; if satisfactory showing is not made within the time allowed, the violations alleged in the notice will be deemed to have been wilful and the range manager will notify the state supervisor thereof for further action under paragraph (e) of this section.

(b) *Violations clearly willful; special circumstances.* Whenever it appears to the district manager that a violation is clearly wilful, grossly negligent, or repeated, or when the public health, safety, or interest requires, or when disciplinary action is advisable, the district manager will refer the matter directly to the State Director for further action under paragraph (c) or (e) of this section, whichever is appropriate. 1/14/62

(c) *Unlawful grazing on the Federal range; determination of damages; removal of livestock; impoundment.* * * *

(1) Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice of his lien with the range manager will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

1/14/62

(2) Where the owner of the trespassing livestock, or his representative, is known, the district manager shall make a determination of the damage to the Federal range and other property of the United States and shall make a demand for payment upon the alleged violator, setting forth the foregoing values including the value of the forage consumed. Where the trespass grazing is not deemed to be clearly wilful the forage value shall be computed at the rate of $2 per animal unit month, or at the commercial rate if such rate is the higher; if the district manager deemes the trespass grazing to be clearly wilful, grossly negligent, or repeated he shall compute the forage value at $4 per animal unit month, or at twice the commercial rate if such amount is the higher.

1-14-62

(3) In any case where neither the owner of the trespassing livestock, or his representative, is known, or where conservation of the Federal range and of the forage thereon requires it, the district manager, when so authorized by written order of the State Director, may take steps to remove the trespassing livestock by such methods and by such means not inconsistent with legislation which prohibits the use of airborne or motor-driven vehicles in the gathering of horses or burros, as may be necessary, and to dispose of them by sale or otherwise within not less than five (5) days after public notice of his intention to make such disposition, subject to the right of any owner or registered lienholder of such trespassing livestock to redeem the livestock within such nondisposal period upon payment of:

(i) The damage to the Federal range and other property of the United States.

(ii) The cost of such impoundment and removal.

(iii) The value of any forage consumed as determined in accordance with subparagraph (2) of this paragraph.

(4) If the amounts found to be due the United States in accordance with subparagraph (3), subdivisions (i), (ii), and (iii) of this paragraph are contested by the owner of the livestock, his representative, or lienholder, the trespassing livestock may be redeemed by the posting of a cash or corporate surety bond in lieu of immediate payment. Such bond will be adequate to insure full satisfaction of the claims made. A hearing will then be scheduled before an examiner of the Bureau of Land Management. The hearing will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence will be confined to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass. The examiner will render a written decision assessing the amounts due.

1-14-62

(d) *Amicable settlement of civil cases involving unauthorized use of the Federal range or damage to Federal property.* Offers of settlement for the value of the forage consumed in trespass as determined in accordance with paragraph (c) (2) of this section and for damage to Federal range or to other property of the United States resulting from an alleged

by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Supervisor for appropriate action.

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cluding stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(2) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(3) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(4) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(5) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authroized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the range manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(6) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(7) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

(b) *Rules of fair range practice.* All licensees and permittees shall comply with the following rules of fair range practice:

(1) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating to the branding of livestock and sanitary requirements shall be followed.

(2) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the range manager.

(3) All licensees and permittees shall provi [illegible] range for their [illegible] k, and shall [illegible] ing to instru [illegible] nager. Upon [illegible] users of ar [illegible] ederal rang [illegible] escribe the [illegible] umber of bu [illegible] ment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

§ 161.12 *Procedure for enforcement of rules and regulations.* A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of the Federal Range Code for Grazing Districts, or of any approved special rule. 10/30/58

(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the range manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the range manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of the Federal Range Code for Grazing

Districts or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the ra... will close the case; if sa... made withi... tions allege... ed to have ... nager will r... ereof for ... h (e) of thi...

(b) *Violations clearly wilful; special circumstances.* Whenever it appears to the range manager that a violation is clearly wilful or when the public health, safety, or interest requires, the range manager will refer the matter directly to the state supervisor for further action ~~under paragraph (e) of this section.~~

~~(c)~~ (c) *Unlawful grazing on the Federal range; determination of damages; removal of livestock; impoundment.* * * *

Federal rang... mpoundment. (1) Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice of his lien with the range manager will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(2) Where the owner of the trespassing livestock, or his representative, is known, the district manager shall make a determination of the damage to the Federal range and other property of the United States and shall make a demand for payment upon the alleged violator,

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(2) In any case where the owner of the trespassing livestock, or his representative, is unknown, or where conservation of the Federal range and of the forage thereon requires it, the district manager when so authorized by order of the State Supervisor may take steps to remove the trespassing livestock by such methods and by such means not inconsistent with legislation which prohibits the use of airborne or motor-driven vehicles in the gathering of horses and burros, as may be necessary, and to dispose of them by sale or otherwise within not less than 48 hours after public notice of his intention to make such disposition, subject to the right of any owner or registered lien holder of such trespassing livestock to redeem the livestock within such nondisposal period upon payment of (i) the value of the forage consumed, (ii) damage to the Federal range and other property of the United States, and (iii) the cost of such impoundment and removal, as determined by the district manager.

3. Paragraph 161.15(g)(2)(i) is amended to read as follows: 7-8-60

(3) ... ie Federal rang... equires it, the ... approval of th... ay tempo- raril... r any por- tion ... ny class of livestock to be specified in such order. Notice of the order shall be published in a local newspaper and shall be posted at the County Courthouse of the County in which the closed area lies. The order shall require all owners of livestock affected thereby, to remove such livestock from the area within not less than five days from date of publication of the notice. Thereafter the range manager shall proceed to impound, remove, and dispose of, in the most humane manner in accordance with the provisions of this paragraph any such livestock trespassing or grazing in violation of the closing order.

~~(d) *Amicable settlement of civil cases*~~ *involv... erty.* All off... ue of the fo... d for damag... other prope... ulting from ... rovi- sion o... ange Code ... rans- mitte... con-

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(d) *Amicable settlement of civil cases involving unauthorized use of the Federal range or damage to Federal property.* Offers of settlement for the value of the forage consumed in trespass as determined in accordance with paragraph (c) (2) of this section and for damage to Federal range or to other property of the United States resulting from an alleged

by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Supervisor for appropriate action

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cluding stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(2) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(3) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(4) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(5) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authroized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the range manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(6) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(7) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

(b) *Rules of fair range practice.* All licensees and permittees shall comply with the following rules of fair range practice:

(1) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating to the branding of livestock and sanitary requirements shall be followed.

(2) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the range manager.

(3) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the range manager. Upon request by the majority of the users of any community allotment of Federal range, the range manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

§ 161.11 *General rules of the range.* * * *

(b) *Rules of fair range practice.* * * *

(4) When so requested by the State Supervisor or district manager, the licensee or permittee shall join with the Bureau of Land Management in preparing a fire plan which shall set forth in detail the program for prevention, control, and extinguishment of fires, including the responsibility of the licensee or permittee for action on his range allotment and on adjacent Federal range.

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(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the range manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the range manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of the Federal Range Code for Grazing

Districts or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the range manager he will close the case; if satisfactory showing is not made within the time allowed, the violations alleged in the notice will be deemed to have been wilful and the range manager will notify the state supervisor thereof for further action under paragraph (e) of this section.

(b) *Violations clearly willful; special circumstances.* Whenever it appears to the district manager that a violation is clearly wilful, grossly negligent, or repeated, or when the public health, safety, or interest requires, or when disciplinary action is advisable, the district manager will refer the matter directly to the State Director for further action under paragraph (c) or (e) of this section, whichever is appropriate. 1/14/62

(c) *Unlawful grazing on the Federal range; determination of damages; removal of livestock; impoundment.* * * *

(1) Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice of his lien with the range manager will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(2) Where the owner of the trespassing livestock

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~~(3) Where conservation of the Federal range and the forage thereon requires it, the State Supervisor, with the approval of the Area Administrator, may temporarily close a grazing district or any portion thereof, to grazing by any class of livestock to be specified in such order. Notice of the order shall be published in a local newspaper and shall be posted at the County Courthouse of the County in which the closed area lies. The order shall require all owners of livestock affected thereby, to remove such livestock from the area within not less than five days from date of publication of the notice. Thereafter the range manager shall proceed to im … ve, and dispose … manner in acco … of this paragr … passing or gra … closing order.~~

~~(d)~~ … *l cases involving unauthorized use of the Federal range or damage to Federal property.* All offers of settlement for the value of the forage consumed in trespass and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provision of the act or of the Federal Range Code for Grazing Districts in the amount of $2,000 or less may be accepted by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Supervisor for appropriate action.

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violation of any provisions of the act or of the Federal Range Code for Grazing Districts in the amount of $2,000 or less may be accepted by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for the consumed forage and damage involved until finally accepted by the district manager or the State Director. Satisfaction of civil liability does not relieve the alleged violator of any criminal liability under Federal law. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

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(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Director that disciplinary action is advisable because of a wilful, grossly negligent, or repeated violation, he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit and the section or sections of the Federal Range Code for Grazing Districts, or of the Act alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the value of the forage consumed, as determined in accordance with paragraph (c)(2) of this section. The notice will cite the license or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license, permit, or base property qualifications should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

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(2) The hearing upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, including the value of any forage consumed, due the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages, including the value of any forage consumed, as determined in accordance with paragraph (c)(2) of this section, and directing the district manager to suspend, reduce, or revoke the license, permit, or base property qualifications or to deny renewal, if the facts so warrant.

consumed and directing the district manager to suspend, reduce, or revoke the license or permit or to deny renewal, if the facts so warrant.

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~~ten decision assessing the amount of damages and directing the range manager to suspend, reduce, or revoke the license or permit or to deny renewal, if the facts so warrant.~~

(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a wilful or wanton violation of any provision of the Federal Range Code for Grazing Districts or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the range manager may refuse to issue or renew a license or permit, or the State Supervisor may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of the Federal Range Code for Grazing Districts or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary on any matter under this section shall be made in accordance with the applicable provisions of § 161.10 and the rules of practice (Part 221 of this chapter).

§ 161.13 *Grazing District Advisory Boards*—(a) *Authorization for establishment; number of members; qualifications.* The State Supervisor shall fix the number of members to be elected for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be elective but shall be appointed directly by the State Supervisor. The State Supervisor may fix the number of district advisers to be elected as representatives of each class of stockmen, according to the kind of livestock owned,

or may fix the number to be elected from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

(b) *Election; time and place; the general procedures.* All district advisers, except wildlife representatives, shall be elected in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management and published in the FEDERAL REGISTER. An election of district advisers for each grazing district will be held within ninety days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons elected as advisers at the first election of the new district may hold office for a three-year term, or the range manager may divide the group, by lot, as evenly as may be, into three classes to serve for one year, two years, or three years respectively, and until their successors are elected and have qualified. Thereafter in such new district and in existing district, the Range Manager, after recommendation by the advisory board, shall determine whether elections shall be held annually or every three years and whether by actual polling or by mail, in accordance with the options in the General Procedures for Grazing District Advisory Board Elections.

(c) *Appointment; term of office; removal; vacancies.* Upon receipt of the judges' certificate of returns after conclusion of the election procedure the Range Manager shall notify the State Supervisor of the results thereof. A person elected as district adviser shall assume office only after he has been appointed by the State Supervisor and has taken the oath of office. Such person shall serve for the term for which he has been elected and until his successor is elected and has qualified. The State Supervisor may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of a district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the range manager, shall be transmitted to the State Supervisor for consideration. A person appointed to fill a vacancy shall hold office until the next regular election. The wildlife representative shall hold office for a term of three years and until a successor is appointed by the State Supervisor.

(d) *Meetings; organization.* District advisory boards shall meet at any time and place within or near the district designated by the State Supervisor or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licences or permits or any other business.

(e) *Functions and duties of district advisers; limitations.* District advisers shall advise or make recommendations on the following matters:

(1) The qualifications, classification, and requirements of base property.

(2) The transfer and relinquishment of base property qualifications.

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An offer of settlement will not constitute satisfaction of civil liability for the consumed forage and damage involved until finally accepted by the district manager or the State Supervisor and in no event will it relieve the violator of criminal liability. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

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been offered and until payment of any amount due as grazing fees has been made.

Any grazing on the Federal range within

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Director that disciplinary action is advisable because of a wilful, grossly negligent, or repeated violation, he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit and the section or sections of the Federal Range Code for Grazing Districts, or of the Act alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the value of the forage consumed, as determined in accordance with paragraph (c)(2) of this section. The notice will cite the license or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license, permit, or base property qualifications should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

(2) The hearing upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, including the value of any forage consumed, due the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages, including the value of any forage consumed, as determined in accordance with paragraph (c)(2) of this section, and directing the district manager to suspend, reduce, or revoke the license, permit, or base property qualifications or to deny renewal, if the facts so warrant.

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(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a wilful or wanton violation of any provision of the Federal Range Code for Grazing Districts or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the range manager may refuse to issue or renew a license or permit, or the State Supervisor may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of the Federal Range Code for Grazing Districts or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary on any matter under this section shall be made in accordance with the applicable provisions of § 161.10 and the rules of practice (Part 221 of this chapter).

§ 161.13 *Grazing District Advisory Boards*—(a) *Authorization for establishment; number of members; qualifications.* The State Supervisor shall fix the number of members to be elected for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be elective but shall be appointed directly by the State Supervisor. The State Supervisor may fix the number of district advisers to be elected as representatives of each class of stockmen, according to the kind of livestock owned,

or may fix the number to be elected from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

(b) *Election; time and place; the general procedures.* All district advisers, except wildlife representatives, shall be elected in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management and published in the FEDERAL REGISTER. An election of district advisers for each grazing district will be held within ninety days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons elected as advisers at the first election of the new district may hold office for a three-year term, or the range manager may divide the group, by lot, as evenly as may be, into three classes to serve for one year, two years, or three years respectively, and until their successors are elected and have qualified. Thereafter in such new district and in existing district, the Range Manager, after recommendation by the advisory board, shall determine whether elections shall be held annually or every three years and whether by actual polling or by mail, in accordance with the options in the General Procedures for Grazing District Advisory Board Elections.

(c) *Appointment; term of office; removal; vacancies.* Upon receipt of the judges' certificate of returns after conclusion of the election procedure the Range Manager shall notify the State Supervisor of the results thereof. A person elected as district adviser shall assume office only after he has been appointed by the State Supervisor and has taken the oath of office. Such person shall serve for the term for which he has been elected and until his successor is elected and has qualified. The State Supervisor may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of a district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the range manager, shall be transmitted to the State Supervisor for consideration. A person appointed to fill a vacancy shall hold office until the next regular election. The wildlife representative shall hold office for a term of three years and until a successor is appointed by the State Supervisor.

(d) *Meetings; organization.* District advisory boards shall meet at any time and place within or near the district designated by the State Supervisor or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licences or permits or any other business.

(e) *Functions and duties of district advisers; limitations.* District advisers shall advise or make recommendations on the following matters:

(1) The qualifications, classification, and requirements of base property.

(2) The transfer and relinquishment of base property qualifications.

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~~(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Supervisor that a wilful violation exists he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit and the section or sections of the Federal Range Code for Grazing Districts or of the act alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the reasonable commercial value of any forage consumed. The notice will cite the licensee or permittee to appear before an Examiner of the Bureau of Land Management at a designated time and place to show cause why his license or permit should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.~~

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(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a wilful or wanton violation of any provision of the Federal Range Code for Grazing Districts or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the range manager may refuse to issue or renew a license or permit, or the State Supervisor may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of the Federal Range Code for Grazing Districts or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary on any matter under this section shall be made in accordance with the applicable provisions of § 161.10 and the rules of practice (Part 221 of this chapter).

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or may fix the number to be elected from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

(b) *Election; time and place; the general procedures.* All district advisers, except wildlife representatives, shall be elected in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management and published in the FEDERAL REGISTER. An election of district advisers for each grazing district will be held within ninety days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons elected as advisers at the first election of the new district may hold office for a three-year term, or the range manager may divide the group, by lot, as evenly as may be, into three classes to serve for one year, two years, or three years respectively, and until their successors are elected and have qualified. Thereafter in such new district and in existing district, the Range Manager, after recommendation by the advisory board, shall determine whether elections shall be held annually or every three years and whether by actual polling or by mail, in accordance with the options in the General Procedures for Grazing District Advisory Board Elections.

(c) *Appointment; term of office; removal; vacancies.* Upon receipt of the judges' certificate of returns after conclusion of the election procedure the Range Manager shall notify the State Supervisor of the results thereof. A person elected as district adviser shall assume office only after he has been appointed by the State Supervisor and has taken the oath of office. Such person shall serve for the term for which he has been elected and until his successor is elected and has qualified. The State Supervisor may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of a district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the range manager, shall be transmitted to the State Supervisor for consideration. A person appointed to fill a vacancy shall hold office until the next regular election. The wildlife representative shall hold office for a term of three years and until a successor is appointed by the State Supervisor.

(d) *Meetings; organization.* District advisory boards shall meet at any time and place within or near the district designated by the State Supervisor or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licences or permits or any other business.

(e) *Functions and duties of district advisers; limitations.* District advisers shall advise or make recommendations on the following matters:

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(2) The transfer and relinquishment of base property qualifications.

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(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a wilful or wanton violation of any provision of the Federal Range Code for Grazing Districts or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the range manager may refuse to issue or renew a license or permit, or the State Supervisor may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of the Federal Range Code for Grazing Districts or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary on any matter under this section shall be made in accordance with the applicable provisions of § 161.10 and the rules of practice (Part 221 of this chapter).

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or may fix the number to be elected from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

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(c) *Appointment; term of office; removal; vacancies.* Upon receipt of the judges' certificate of returns after conclusion of the election procedure the Range Manager shall notify the State Supervisor of the results thereof. A person elected as district adviser shall assume office only after he has been appointed by the State Supervisor and has taken the oath of office. Such person shall serve for the term for which he has been elected and until his successor is elected and has qualified. The State Supervisor may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of a district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the range manager, shall be transmitted to the State Supervisor for consideration. A person appointed to fill a vacancy shall hold office until the next regular election. The wildlife representative shall hold office for a term of three years and until a successor is appointed by the State Supervisor.

(d) *Meetings; organization.* District advisory boards shall meet at any time and place within or near the district designated by the State Supervisor or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licences or permits or any other business.

(e) *Functions and duties of district advisers; limitations.* District advisers shall advise or make recommendations on the following matters:

(1) The qualifications, classification, and requirements of base property.

(2) The transfer and relinquishment of base property qualifications.

(3) The grazing capacity of the Federal range in the district.

(4) Applications for all types of grazing licenses or permits, including nonuse, or extension of use, except applications of district advisers.

(5) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(6) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of the Federal Range Code for Grazing Districts.

(7) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(8) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(9) Proper rules of fair range practice.

(10) Allotments of range by classes of livestock or for community or individual use.

(11) Seasonal use of the Federal range or any part thereof.

(12) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(13) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(14) Any recommendations made by local associations of stockmen in the district.

(15) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(16) Special rules for the district, within the meaning of § 161.16.

(17) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

* * * * *

(f) *State Advisory Boards.* The livestock members of each grazing district advisory board shall select from their number at the first meeting of the board after each election, two members and two alternates to serve on a State advisory board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State will select one of their number and one alternate to serve as a wildlife member on the State advisory board. In addition, the State advisory board will have one or more additional members, but not exceeding seven, who will represent other interests such as forestry, minerals, soil conservation, outdoor recreation, urban and suburban development, county government, and State government. Such additional members and their alternates will be selected by the State Director from nominations made by State or local government officers or organizations reflecting nonlivestock interests in the management or disposition of public lands. The time and place for meetings of the State advisory board shall be set by the State Director. The board shall select from its members one member to be chairman of the board. The co-chairman of the board shall be the State Director.

(g) *National Advisory Board Council.* The livestock members of each State advisory board shall select from their number, at its first meeting of each new term, one representative and one alternate representing cattle and horses, and one representative and one alternate representing sheep and goats, to serve on a National Advisory Board Council. The elected wildlife member or his alternate on each State advisory board will serve on the National Advisory Board Council as the State representative on wildlife matters. The State Director from each of the ten Western States with organized grazing districts shall submit a list of nominees, selected from the nonlivestock and nonwildlife membership on the State board, to the Secretary of the Interior or his authorized representative for consideration in the selection of nonlivestock and nonwildlife representatives on the Council. Such nonlivestock and nonwildlife membership on the Council shall not exceed ten in number. In addition to the above membership, one representative from each of the States of Alaska and Washington will be selected by the Secretary of the Interior or his authorized representative from a list submitted by the

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respective State Directors pursuant to nominations made by State or local government officers or organizations reflecting interests in grazing or other uses of public lands. The Council shall select from its members one member to be chairman of the Council. The co-chairman of the Council shall be an official of the Department of the Interior appointed by the Secretary of the Interior who shall set the time and place for such meetings of the National Advisory Board Council.

(h) *Functions and duties of State advisory boards and National Advisory Board Council.* The State advisory boards shall consider and make recommendations on grazing, wildlife, forestry, outdoor recreation, minerals, soil conservation, urban and suburban development, and any other resource administration policies or problems affecting the State as a whole. Similarly, the National Advisory Board Council shall consider and make recommendations on policies and problems of a national scope related to all natural resource use and management. The operations of the State boards and the National Council, including their meetings, shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

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or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Supervisor for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance in which they are in conflict with the provisions of the Federal Range Code for Grazing Districts or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

(c) *Powers.* Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(1) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(2) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district, under permit issued by the Bureau.

(3) To act in an advisory capacity in the administration of the Federal range lying within the district.

(4) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes contemplated by the act.

(5) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

(d) *Cooperative agreements for use of lands; obligation of licensees and permittees to share cost.* Whenever the grazing capacity of Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the range manager after consideration of the recommendation of the association. The range manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

§ 161.15 *Construction and maintenance of improvements on the Federal range*—(a) *Qualification of applicants*

(3) The grazing capacity of the Federal range in the district.

(4) Applications for all types of grazing licenses or permits, including nonuse, or extension of use, except applications of district advisers.

(5) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(6) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of the Federal Range Code for Grazing Districts.

(7) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(8) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(9) Proper rules of fair range practice.

(10) Allotments of range by classes of livestock or for community or individual use.

(11) Seasonal use of the Federal range or any part thereof.

(12) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(13) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(14) Any recommendations made by local associations of stockmen in the district.

(15) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection

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horses, and one representative and one alternate representing sheep and goats, to serve on a National Advisory Board Council. The wildlife members of the several State Advisory Boards in each of the three B. L. M. Areas may select one of their number and one alternate to serve on the National Council as their area representative on wildlife matters.

(h) *Functions and duties of State Advisory Boards and National Advisory Board Council.* In addition to the service rendered on grazing district advisory boards, the State Advisory Board members shall consider and make recommendations on grazing administration policies or problems affecting the State as a whole. The National Advisory Board councilmen, in addition to serving on their respective district and State Ad-

Paragraphs (f) and (g) of § 161.13 are amended by adding new sentences at the end of each paragraph as follows:

§ 161.13 Grazing District Advisory Boards.

* * * * *

(f) *State Advisory Boards.* * * * The board shall select from its members one member to be chairman of the board. The co-chairman of the board shall be the State Supervisor.

(g) *National Advisory Council.* * * * The council shall select from its members one member to be chairman of the council. The co-chairman of the council shall be an official of the Department of the Interior appointed by the Secretary of the Interior.

STEWART L. UDALL,
Secretary of the Interior.

MARCH 14, 1961.

[F.R. Doc. 61-2372; Filed, Mar. 17, 1961; 8:46 a.m.]

~~visory Boards, shall consider and make recommendations on grazing administration policies and problems of national scope.~~

§ 161.14 *Local associations of stockmen*—(a) *Organization.* Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

(b) *Articles of incorporation; constitutions; by-laws.* Such associations shall be organized as corporations "not-for-profit", if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Supervisor for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance in which they are in conflict with the provisions of the Federal Range Code for Grazing Districts or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

(c) *Powers.* Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(1) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(2) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district, under permit issued by the Bureau.

(3) To act in an advisory capacity in the administration of the Federal range lying within the district.

(4) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes contemplated by the act.

(5) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

(d) *Cooperative agreements for use of lands; obligation of licensees and permittees to share cost.* Whenever the grazing capacity of Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the range manager after consideration of the recommendation of the association. The range manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

§ 161.15 *Construction and maintenance of improvements on the Federal range*—(a) *Qualification of applicants*

(3) The grazing capacity of the Federal range in the district.

(4) Applications for all types of grazing licenses or permits, including nonuse, or extension of use, except applications of district advisers.

(5) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(6) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of the Federal Range Code for Grazing Districts.

(7) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(8) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(9) Proper rules of fair range practice.

(10) Allotments of range by classes of livestock or for community or individual use.

(11) Seasonal use of the Federal range or any part thereof.

(12) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(13) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(14) Any recommendations made by local associations of stockmen in the district.

(15) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection

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bers and two alternates to serve on a State Advisory Board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State may select one of their number and one alternate to serve on the State Advisory Board as their representative on wildlife matters.

(g) *National Advisory Board Council.* Each State Advisory Board shall select from its members, at its first meeting of each new term, one representative and one alternate representing cattle and horses, and one representative and one alternate representing sheep and goats, to serve on a National Advisory Board Council. The wildlife members of the several State Advisory Boards in each of the three B. L. M. Areas may select one of their number and one alternate to serve on the National Council as their area representative on wildlife matters.

(h) *Functions and duties of State Advisory Boards and National Advisory Board Council.* In addition to the service rendered on grazing district advisory boards, the State Advisory Board members shall consider and make recommendations on grazing administration policies or problems affecting the State as a whole. The National Advisory Board councilmen, in addition to serving on their respective district and State Ad-

~~visory Boards, shall consider and make recommendations on grazing administration policies and problems of national scope.~~

§ 161.14 *Local associations of stockmen*—(a) *Organization.* Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

(b) *Articles of incorporation; constitutions; by-laws.* Such associations shall be organized as corporations "not-for-profit", if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Supervisor for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance in which they are in conflict with the provisions of the Federal Range Code for Grazing Districts or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

(c) *Powers.* Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(1) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(2) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district, under permit issued by the Bureau.

(3) To act in an advisory capacity in the administration of the Federal range lying within the district.

(4) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes contemplated by the act.

(5) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

(d) *Cooperative agreements for use of lands; obligation of licensees and permittees to share cost.* Whenever the grazing capacity of Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the range manager after consideration of the recommendation of the association. The range manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

§ 161.15 *Construction and maintenance of improvements on the Federal range*—(a) *Qualification of applicants*

for permits. An applicant for a permit to construct or maintain improvements under section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must be qualified under § 161.3 (a).

(b) *Applications.* Applications for such permits shall be filed in triplicate with the range manager on form 4–1115.

(c) *Appeals.* The range manager will act on the application after reference to the advisory board and such action shall be final unless the applicant or any interested party appeals in accordance with § 161.10.

(d) *Assignments.* Assignments of section 4 permits shall be filed with the range manager in triplicate on the authorized form and shall not be effective until approved by the range manager.

(e) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* Where an application shows that the applicant and the prior occupant have not agreed on the value of such improvements owned by the latter, the range manager will promptly, at the applicant's expense, cause the prior occupant to be served either personally or by registered mail with a notice of the filing of the application, and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or if the prior occupant applies within thirty days from the date of service for an appearance before the range manager, then in the light of such evidence as the applicant and the prior occupant may present in such appearance, the range manager will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken in accordance with § 161.10. Upon the failure of the prior occupant to show cause or to apply within thirty days for an appearance, the reasonable value of the improvements will be determined by the range manager but shall be not less than the amount alleged by the applicant in his application, and the decision of the range manager in such case shall be final. In any case when a decision has become final, payment by the applicant of the amount determined and a showing that the improvements are free of all encumbrances may be required prior to favorable action on the application for use of such improvements, and on any application for grazing privileges involving the use of such improvements.

(f) *Cooperative agreements.* A licensee or permittee may enter into a cooperative agreement with the range manager for the construction and maintenance of range improvements on the Federal range. Failure of the licensee or permittee to comply with the terms of such an agreement within a reasonable time as allowed by the range manager may result in cancellation of the license or permit as provided in § 161.9 (d).

(g) *Applications for lands containing range improvements; compensation; reservation.* Public lands embraced in a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, or other public land laws, as specified in § 161.5 (e).

(1) When the disposal application covers land upon which range improvements have been placed pursuant to a permit authorized under section 4 of the act, the owner thereof may be required to remove the improvements; or if the improvements are of a permanent nature, the land applicant may be required to agree in writing to compensate the licensee, permittee, or other owner of such improvements located on the lands applied for, in an amount to be mutually agreed upon, or, if the parties are unable to agree, then in the amount and within the time for payment as deter-

mined by the range manager in accordance with the applicable procedure under paragraph (e) of this section.

(2)(i) When the disposal application covers public land upon which range improvements have been placed by the United States, or pursuant to a cooperative agreement heretofore or hereafter entered into between the Bureau and the licensee, permittee, and/or other cooperators, the disposal application will be referred by the land office manager to the district manager for determination as to whether it may be allowed, notwithstanding such improvements, and, if so, whether with or without a reservation. If the application is to be allowed without a reservation of the improvements, the applicant may be required to agree in writing to compensate for the loss of such improvements in the amounts to be mutually agreed upon and payable separately to the Bureau and to the cooperators. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. In the event of disagreement, the district manager shall determine the total amount of compensation due, as provided in paragraph (e) of this section, and the time for payment. Such amount shall then be payable separately to the Bureau and to the cooperators entitled thereto, in proportion to the amount or value of their respective contributions in money, material, or labor, to the total cost of the improvement, as made by them under the original cooperative agreement, as specified by the district manager.

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(ii) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the range manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Director and to the Secretary, in accordance with the rules of practice (Part 221 of this chapter).

(3) Under the act of July 9, 1942, as amended (43 U. S. C. sec. 315q), the holder of a grazing license or permit shall be compensated for the losses sustained by reason of cancellation of or prevention of use of authorized grazing privileges resulting from the use of lands embraced in such license or permit for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the Federal department or agency making such use. Such payment shall be deemed payment in full for such losses.

§ 161.16 *Special rules for grazing districts.* Whenever it appears to a state supervisor after considering the recommendation of the district advisory board that local conditions in any district make necessary the adoption of a special rule on any of the matters in the Federal Range Code for Grazing Districts in order better to achieve an administration consistent with the purposes of the act, he may, with the concurrence of the Area Administrator, recommend such a rule, supported by a factual showing of its necessity, for the approval of the Director. Such rule, if approved, shall be published in the FEDERAL REGISTER.

§ 161.17 *Contributions, for administration, protection, and improvement of public lands.* The State Supervisor may accept contributions, under section 9 of the act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction in the states.

(a) Any individual, association, corporation, grazing district advisory board, state or local body or private group, may enter into an agreement with the State Supervisor with respect to such contribution. Where the contribution is to in-

for permits. An applicant for a permit to construct or maintain improvements under section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must be qualified under § 161.3 (a).

(b) *Applications.* Applications for such permits shall be filed in triplicate with the range manager on form 4–1115.

(c) *Appeals.* The range manager will act on the application after reference to the advisory board and such action shall be final unless the applicant or any interested party appeals in accordance with § 161.10.

(d) *Assignments.* Assignments of section 4 permits shall be filed with the range manager in triplicate on the authorized form and shall not be effective until approved by the range manager.

(e) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* Where an application shows that the applicant and the prior occupant have not agreed on the value of such improvements owned by the latter, the range manager will promptly, at the applicant's expense, cause the prior occupant to be served either personally or by registered mail with a notice of the filing of the application, and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or if the prior occupant applies within thirty days from the date of service for an appearance before the range manager, then in the light of such evidence as the applicant and the prior occupant may present in such appearance, the range manager will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken in accordance with § 161.10. Upon the failure of the prior occupant to show cause or to apply within thirty days for an appearance, the reasonable value of the improvements will be determined by the range manager but shall be not less than the amount alleged by the applicant in his application, and the decision of the range manager in such case shall be final. In any case when a decision has become final, payment by the applicant of the amount determined and a showing that the improvements are free of all encumbrances may be required prior to favorable action on the application for use of such improvements, and on any application for grazing privileges involving the use of such improvements.

(f) *Cooperative agreements.* A licensee or permittee may enter into a cooperative agreement with the range manager for the construction and maintenance of range improvements on the Federal range. Failure of the licensee or permittee to comply with the terms of such an agreement within a reasonable time as allowed by the range manager may result in cancellation of the license or permit as provided in § 161.9 (d).

(g) *Applications for lands containing range improvements; compensation; reservation.* Public lands embraced in a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, or other public land laws, as specified in § 161.5 (e).

(1) When the disposal application covers land upon which range improvements have been placed pursuant to a permit authorized under section 4 of the act, the owner thereof may be required to remove the improvements; or if the improvements are of a permanent nature, the land applicant may be required to agree in writing to compensate the licensee, permittee, or other owner of such improvements located on the lands applied for, in an amount to be mutually agreed upon, or, if the parties are unable to agree, then in the amount and within the time for payment as deter-

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proveme the United States, or pursuant to a cooperative agreement heretofore or hereafter entered into between the Bureau and the licensee, permittee, and/or other cooperators, the disposal application will be referred by the land office manager to the range manager for determination as to whether it may be allowed, notwithstanding such improvements, and, if so, whether with or without a reservation. If the application is to be allowed without a reservation of the improvements, the applicant may be required to agree in writing to compensate for the loss of such improvements in the amounts to be mutually agreed upon and payable separately to the Bureau and to the cooperators. In the event of disagreement, the range manager shall determine the total amount of compensation due, as provided in paragraph (e) of this section, and the time for payment. Such amount shall then be payable separately to the Bureau and to the cooperators entitled thereto, in proportion to the amount or value of their respective contributions in money, material, or labor, to the total cost of the improvement, as made by them under the original cooperative agreement, as specified by the range manager.

(ii) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the range manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Director and to the Secretary, in accordance with the rules of practice (Part 221 of this chapter).

(3) Under the act of July 9, 1942, as amended (43 U. S. C. sec. 315q), the holder of a grazing license or permit shall be compensated for the losses sustained by reason of cancellation of or prevention of use of authorized grazing privileges resulting from the use of lands embraced in such license or permit for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the Federal department or agency making such use. Such payment shall be deemed payment in full for such losses.

§ 161.16 *Special rules for grazing districts.* Whenever it appears to a state supervisor after considering the recommendation of the district advisory board that local conditions in any district make necessary the adoption of a special rule on any of the matters in the Federal Range Code for Grazing Districts in order better to achieve an administration consistent with the purposes of the act, he may, with the concurrence of the Area Administrator, recommend such a rule, supported by a factual showing of its necessity, for the approval of the Director. Such rule, if approved, shall be published in the FEDERAL REGISTER.

§ 161.17 *Contributions, for administration, protection, and improvement of public lands.* The State Supervisor may accept contributions, under section 9 of the act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction in the states.

(a) Any individual, association, corporation, grazing district advisory board, state or local body or private group, may enter into an agreement with the State Supervisor with respect to such contribution. Where the contribution is to include money, the contributor should execute form 4–1268 or 4–1269 as requested by the range manager.

(b) Contributions may be conditioned upon their use for specific projects or in specific localities.

(c) Upon written request of the contributor, the State Supervisor may authorize refund of any amounts deposited, in excess of the contributor's proper share of the expense incident to the purpose for which the contribution was made.

§ 161.18 *Pledge of licenses and permits as security for loans; application for extension of permit term by borrower-permittee.* (a) A license or permit may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the licensee's or permittee's livestock operations. Before a loan is made the lending agency may ascertain from the range manager the status of the grazing license or permit and other pertinent information relating thereto. A service fee of $10 will be charged non-Federal lending agencies for such information.

(b) A borrower-permittee desiring an extension of the term of his permit may file a request therefor, in writing, with the range manager, setting forth the name of the lending agency, purpose and amount of loan, and the need for the extension of the permit term. When it appears that such extension will be in accordance with applicable law and regulation and not contrary to the public interest, the range manager, in his discretion, may extend the permit for a period not to exceed 10 years from the date of the loan, subject to the rules and regulations then in force and to such additional terms and conditions as the range manager may provide. The provisions of this paragraph shall not be applicable to grazing licenses which are issued annually on a temporary basis prior to the issuance of term permits.

(c) If the base property to which the grazing privileges on the Federal range covered by the pledged license or permit are attached as a grazing unit is acquired by the lending agency through foreclosure or otherwise, such agency, or purchasers, lessees, or occupants of the property authorized by such agency, if qualified, may apply to be recognized as the successor licensee, or permittee. If in selling the property the lending agency takes back a mortgage on the base property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files with the range manager notice that it has made a loan and has accepted a grazing license or permit as security therefor in conformity with the provisions of this section, the range manager as a matter of cooperation will keep such agency advised of any adverse action affecting the license or permit, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the range manager or the Bureau or any of its employees.

§ 161.19 *Saving clause.* So far as practicable and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in § 161.1 (a) of the Federal Range Code for Grazing Districts, the provisions of §§ 161.1 to 161.19 inclusive of the Code will not be applied to the prejudice of the position of anyone who on the date of approval of these regulations was the holder of a grazing license or permit or who on that date had pending an application therefor.

Interested persons may submit in triplicate written comments, suggestions, or objections with respect to the regulations to the Bureau of Land Management, Washington 25, D. C., within 30 days from the date of publication in the FEDERAL REGISTER.

CLARENCE A. DAVIS,
Acting Secretary of the Interior.

DECEMBER 19, 1955.

[F. R. Doc. 55–10282; Filed, Dec. 22, 1955; 8:45 a. m.]

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Idaho Code--1947

Title 25, Chapter 12. - Brands

25-1201. Definitions.--Every person, association, or corporation who owns any cattle, horses, mules, asses or sheep in this state and is engaged in the business of breeding, growing or raising the same for profit or otherwise, is deemed a stockgrower, and all cattle, horses, mules, asses and sheep are deemed livestock.

25-1202. Use of brands restricted.--Every stock grower in this state must use one, and only one brand for cattle, one and only one brand for horses, mules and asses; which brand must be placed in a conspicuous place on the animal. It shall be unlawful for any person to use any brand as herein provided, unless such brand be designated in the application for the recording of the brand and the brand be recorded with the state brand inspector.

25-1203. Use of brands for sheep restricted--use of earmarks--unrecorded brands. --Every sheep owner who is a stock grower within the meaning of this chapter, must use one, and only one, brand for sheep, which brand must be recorded as herein provided: provided, any stock grower may record and use either an earmark or eartag, or both an earmark and eartag, in addition to his brand. In addition to his recorded brand, earmark or eartag, he may, for the purpose of distinguishing the sheep of one of his bands from the sheep of the other use one or more of the digits except the digit one and 0, which herd brand shall not be recorded. Neither of the digits shall be used on sheep except as provided in this section.

25-1204. Brands to be recorded.--All brands, earmarks and eartags shall be recorded with the state brand inspector. No evidence of ownership of stock by brand, earmark or eartag shall be permitted in any court of this state unless the brand or earmark or eartag be recorded as provided in this chapter.

25-1205. Manner of recording brands.--Every stock grower whose brands, waddle, dulap, earmark or eartag is not recorded, desiring to use any brand, waddle, dulap, earmark or eartag on any stock shall make and file in duplicate a certificate setting forth a facsimile and description of the brand, waddle, dulap, earmark or eartag which he desires to use, which certificate shall state the post office address and county of his residence and he shall file such certificate with the state brand inspector, and the same shall be recorded in a book kept for that purpose, by the state brand inspector, and from and after the filing of such certificate, the stock grower filing the same shall have the exclusive right to use such brand or eartag within the state of Idaho, providing, however, that prior to the use of said brand or eartag, said applicant shall file with the county recorder of the county of his residence a copy of said application or certificate certified to by the state brand inspector. Such person upon the filing of the brand, waddle, dulap, earmark, or eartag shall pay to the state brand inspector for recording the brand or eartag the sum of one dollar and it shall be the duty of the state brand inspector to furnish without further or other charge a certified copy of the certificate to the owner thereof upon his request and for each additional copy he shall be paid a fee of fifty cents; provided, further, that the state brand inspector shall not file or record any such brand, or eartag, if the same has already been filed or recorded by it in favor of some other stock grower.

25-1206. Recording certified copy with county recorder.--Upon the recording of any such brand, waddle, dulap, earmark or eartag with the state brand inspector as herein provided, the owner thereof must procure from the state brand inspector a certified copy of the record of such brand, waddle, dulap, earmark or eartag,

paying therefor the sum of fifty cents, and must cause the same to be recorded in the office of the county recorder in every county or counties in which such owner proposes to range such stock upon which the brand, waddle, dulap, earmark or eartag is used or to be used. It shall be unlawful for any recorder of any county of this state to record any brand, waddle, dulap, earmark or eartag unless the same is accompanied with the certificate of the state brand inspector to the effect that the same has been recorded in the state brand book.

25-1207. Renewal of brands.--Every owner of a brand must, on or before July1st, 1939, and five years after date of recording renew said brand or eartag by making application for renewal in the office of the state brand inspector. For renewing such recording on or before July 1st, 1939, said owner shall pay to the state brand inspector as follows: If the regular fee for recording has been paid less than six months, no additional fee whatsoever; if such regular fee was paid more than six months and less than twelve months prior to July 1, 1939, the fee shall be 30¢; if more than twelve months and less than eighteen months, the fee shall be 45¢; if more than eighteen months and less than two years, the fee shall be 60¢; if more than two years and less than thirty months, the fee shall be 75¢; if more than thirty months and less than thirty-six months, the fee shall be 90¢; if more than thirty-six months and less than forty-two months, the fee shall be $1.05; if more than forty-two months and less than four years the fee shall be $1.20; if more than four years and less than four and one-half years, the fee shall be $1.35, and if more than four and one-half years, and less than five years, the fee shall be $1.50. Said owner shall thereafter every five years pay $1.50 and record the same brand or eartag in the same manner as is provided by law for the filing of an original application, unless, by reason of duplication or other legal objections, said brand is changed by the state brand inspector.

25-1208. Sales and transfers of brands.--Any brand or eartag recorded in accordance with the requirements of this chapter shall be the property of the stock grower in whose name the same shall be recorded, and shall be subject to sale, assignment, transfer, devise and descent, the same as personal property. Instruments of writing evidencing any such sale, assignment or transfer shall be acknowledged as deeds to real estate are now required to be and shall be recorded in the office of the state brand inspector and in the office of the county recorder where such brand or eartag is recorded, in a book to be by said officers respectively kept for that purpose, which shall be properly indexed. The recording of such instruments in each of said offices shall have the same force and effect as to third parties, as the recording of instruments affecting real estate, and the acknowledgment of the same shall have the same force and effect as the acknowledgment of deeds to real estate, and certified copies of the record of any such instrument duly acknowledged may be introduced in evidence the same as is now provided for certified copiesof instruments affecting real estate.

25-1209. Conflicting brands.--In deciding as to conflicts of brands, earmarks and eartags, the state brand inspector shall reject any brand, earmark or eartag being the same as one previously recorded in the same place on any animal; it shall also reject all brands known as solid brands and the window sash brand. A variation in the size of a letter, number or figure shall not constitute a new brand and shall be rejected. Combinations of letters, numbers, or figures may be permitted, though the same letter, number or figure may have been recorded singly or together, if in the judgment of the state brand inspector said combination is so different from any previous record as to constitute a new brand with no danger of infringement. Said inspector shall have the right to reject any brand, earmark or eartag that may in his judgment endanger infringement of the previously recorded brand, earmark or eartag.

25-1210. Brand Book.--It shall be the duty of the state brand inspector from time to time as it may be necessary, but at least every five years, to cause to be published in book form a list of all brands or eartags on record at the time of publication. The state brand inspector shall semi-annually, cause to be issued a supplement to the brand book heretofore issued containing the additional brands or eartags or changes in ownership of brands or eartags between the time of the last publication and the time of issuing such supplement. Such brand book shall contain the facsimile of all brands or eartags recorded together with the owners' names and post office addresses. Said records shall be arranged in convenient form for reference. It shall be the duty of the state brand inspector to furnish free of charge to each sheriff in this state one copy of said brand book and supplement, in whose office it shall be kept open for inspection by all persons. Said books and supplements may be sold to the general public at a price to be determined by the state brand inspector which price shall not exceed the cost of the making thereof.

25-1211. Brand as evidence of ownership.--In all suits at law or in equity, or in any criminal proceedings when the title or right of possession is involved, the brand, earmark or eartag of any animal shall be prima facie evidence that the animal belongs to the owner or owners of the brand, earmark or eartag, and that such owner is entitled to the possession of said animal at the time of the action: provided, that such brand, earmark or eartag has been duly recorded as provided by law. Proof of the right of any person to use such brand, earmark, or eartag shall be made by the copy of the record of same, certified to by the state brand inspector in accordance with the provisions of this chapter, or the original certificate issued to him by the state brand inspector. Parol evidence shall be inadmissible to prove the ownership of a brand, earmark or eartag.

25-1212. Sheep owner to notify owner of strange sheep.--Every sheep owner who is a stock grower within the meaning of this chapter who may at any time have sheep in his herd or herds, not his own, shall, within ten days notify the owner of such sheep, if he is known, by registered letter addressed to him at his last known place of residence, describing said sheep by their marks and brands, and stating where said owner may find such herd, and when and where he can cut them out, and in case such owner is unknown, then said stock grower must, within ten days from the time of discovering said sheep in his herd or herds, send by registered latter to the county recorder of the county in which said herd at the time may be, a notice describing said sheep by marks and brands and number as near as can be ascertained, and stating when and where the owner can find said hers, and when and where they can be cut out, together with the sum of one dollar for such recorder's services in sending notices to the owner; and such recorder shall send a copy of such notice, by registered letter, to the stock grower who may be the owner of the recorded brand described in the notice, if such brand has been recorded. The stock grower giving such notice shall receive one dollar each for such notices sent, and repayment of one dollar paid to the recorder, and shall receive the sum of ten cents per head per month or any part of the same from the time of sending said notice, to be recovered from the owner of said estray sheep, for which said stock grower shall have a lien, and shall not be required to deliver said sheep to the other until such sums shall be paid. No sheep owner shall shear or cause to be sheared any sheep not his own without the consent of the owner.

25-1213. Sale of branded animals.--The owners of horses, mules, asses, or cattle running at large upon any range in this state, may dispose of such animals by range delivery, while on the range and ungathered by the sale and delivery of the recorded brands of such animals, but in every such case the purchaser, in order to record title to such animals must have his conveyance or written transfer of such animals described by brand duly acknowledged by the vendor and recorded in

the office of the county recorder of the county in which the animals range, in a book kept for that purpose, and such sale or transfer shall be noted on the record of original brands in the office of the state brand inspector.

25-1214. Partnership brands.--Partners in stock growing may adopt and use partnership brands or marks, in which case they must select, record and use the same in the manner provided for the individual stock growers, or they may adopt and use the individual brand or mark of any individual member of the partnership, duly selected and recorded as provided in this chapter.

25-1215. Mutilating and counterfeiting brands a misdemeanor.--No stock grower or other person in this state must change, conceal, deface, disfigure, or obliterate any brand or mark previously branded, impressed or marked on any animal or head of livestock, or put his own or any other brand upon or over any part of any brand previously branded upon any animal or head of livestock, and no person must mark or use any counterfeit of any brand or mark provided for in this chapter. No person shall cut to a point, or cut off or remove more than one-half of one ear of any head of livestock. Any person violating any of the provisions of this chapter is guilty of a misdemeanor.

Idaho Code, 1947. Title 25, Chapter 21. Stallions running at large.

25-2108. Stallions running at large.--The owner of any stallion over the age of eighteen months must not allow the same to run at large, unless it is of the market cash value of $250.00 or more, and is at such value assessed.

25-2109. Penalty for violations.--If any stallion of less than $250.00 market cash and assessed value, ridgeling, or any unaltered male mule or jackass over the age of eighteen months befound running at large, the owner must be fined for the first offense twenty dollars, and for each subsequent offense not more than $100.00, nor less than forty dollars, to be recovered before a justice of the peace in the name of any person who will prosecute the same, one-half to his own use, and the other half to the use of the county school fund.

25-2110. Stallion may be taken up.--Any person may take up and safely keep any such stallion, mule, ridgeling or jackass found running at large or in his inclosures; and, when so found, must give the owner thereof five days' notice that such animal is in his possession; and if, at the expiration of the aforesaid time, the owner neglects to remove such animal and pay all reasonable charges for keeping the same, then the taker-up must notify the sheriff or any constable, whose duty it is to sell such animal at public auction, on the premises where taken up, after first giving five days' notice of such sale, and the proceeds of such sale must be applied, first, to the fees of the officer making such sale, which are the same as on execution; second, to the payment of the charges of the taker-up of such animal; and the remainder, if there be any, must be paid to the owner of such animal.

25-2111. Notice and sale.--If the owner or claimant of any stallion, ridgeling, unaltered male mule or jackass be unknown, the taker-up must give ten days' notice with the description of the animal or animals, its marks or brands, by posting up at least three written or printed notices in at least three conspicuous places in the county, calling upon the owner to claim the property; and if, at the expiration of the ten days, the owner neglects to remove such animal or animals and pay all costs, then the taker-up shall call on the sheriff or any constable of the county to sell such animal or animals; and after deducting the fees of the officer making such sale and the reasonable charges of the taker-up, the balance, if any there by, shall be paid into the county treasury, to be applied to the county school fund.

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25-2114. Duties of officers.--It is hereby made the duty of any sheriff, deputy sheriff, or constable, to complain against and prosecute any person or persons violating the above sections.

Title 25, Chapter 21, Idaho Code, 1947. Bulls

25-2116. Registered bulls--Failure to provide on range--Penalty.--During the breeding season every user of the public range shall place upon the range used by him a registered bull of beef breed not less than fifteen months of age nor more than eight years of age for every twenty-five head or fraction thereof of female breeding cattle pastured by him on such range, and no person shall permit any bull to run on the same range at any other time than during three successive breeding seasons: provided, that the term female breeding cattle" shall not apply to female cattle under twelve months of age: provided that any two or more persons may join together in furnishing such bull when the aggregate number of female breeding cattle turned loose upon the same range by any such two or more persons does not exceed the number of twenty-five head; provided further, that the owner or owners of female dairy cattle may pasture them on the public range without a bull, as above provided, if such female dairy cattle are taken up each night to be milked and the owner or owners keep for the breeding of every fifty head of such cattle a registered bull of dairy breed, but no person shall allow a bull of dairy breed to run at large.

Any person or persons violating any of the foregoing provisions shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than twenty-five dollars and not exceeding $100.00.

25-2117. Breeding season defined.--The term "breeding season," as used in the preceding section shall be construed according to the local custom upon that range.

Title 25, Chapter 22, Idaho Code, 1947. Trespass of Animals.

25-2201. Liens on trespassing stock.--Any person having any inclosure in conformity with the provisions of Chapter 1 of Title 34, is deemed to possess a lawful inclosure, and if any horses, mules, jacks, jennies, cattle, hogs, or sheep break into such inclosure, the party injured has a lien upon such animals until he is recompensed for all damages committed by said animals: provided, that persons owning or occupying any lands which are inclosed by any watercourse or natural embankment or hill, or any cliff or rocks, may have the same examined by viewers as is provided in this chapter, and if such appraisers report the same as sufficient inclosure, it must be deemed a lawful inclosure.

25-2202. Animal breaking inclosure--Recovery of damages.--If any animal before mentioned breaks into any inclosure or through any fence conforming to the requirements of Chapter 1 of title 34, the owner of such animal must, for such trespass pay to the party injured the full amount of damage he has sustained by reason of such trespass, to be recovered with costs in any court having jurisdiction.

25-2203. Animal may be taken up.--The party injured may take up any animal breaking into such inclosure, and keep the same at the expense of the owner, and the said taker-up has a lien upon such animal for damages, costs and expenses; but the owner may at any time pay charges, costs and expenses and take such animal.

25-2204. Proceedings for assessment of damages.--Upon complaint of the party injured, to any justice of the peace in the county in which such trespass is alleged to have been committed, said justice must issue a summons, as in civil actions against the owner of said property as defendant; if not known, he may be designated in said summons by a fictitious name; upon the return of said summons, if personally served, proceedings must be had as in civil actions; if the summons be not personally served in consequence of such defendant not being found in the county, then the said justice must forthwith notify the bureau of registration of the department of agriculture by registered mail, describing the animal or animals so taken by marks, brands, age, sex, kind, and color, as nearly as the same may be determined, and where the said animals are being held, accompanying such notice with a fee of fifty cents. It shall then be the duty of the bureau of registration to search the record and endeavor to ascertain the owner or owners of such estray animals and to notify such owner or owners if the same can be ascertained, of the pendency of the action against them, giving the name and residence of the justice in whose court said action is pending, and at the same time to notify the justice of the peace in whose court the action is pending that the owner or owners has or have been notified, or that the owner or owners cannot be ascertained. If no appearance is made by the owner of the said animal or animals within ten days after said notice is mailed to the bureau of registration, the said justice shall forthwith issue an order requiring three disinterested freeholders of the precinct named therein not related to the parties, to forthwith view the fence where the trespass is alleged to have been committed, and to appear at the time mentioned in said order, before said justice and give evidence thereof and upon such hearing, if said justice finds that said fence was lawful and sufficient, he must proceed to assess the damages accruing in consequence of said trespass, and render judgment therefor, together with costs, as in other actions; such judgment only binds said property. The bureau of registration shall be entitled to a fee of fifty cents for making the search and giving the notices herein provided for, which fee shall be advanced by the plaintiff and shall be assessed as part of his costs.

25-2205. Per diem and mileage of viewers--Taxation as costs.--The viewers appoited are entitled each to the sum of two dollars for their services and twenty cents each for every mile necessarily traveled by them, which must be taxed as costs in said proceedings.

25-2206. Execution and sale.--Upon the judgment, the justice must issue execution, particularly describing said property, and directing a sale thereof for the satisfaction of said judgment and costs; and the officer to whom the same is delivered for service, must thereupon post notices in three conspicuous and public places in said precinct, which notices must contain a particular description of said property and specify a time and place of sale thereof, as in notice of sale on execution. The justice, constable or sheriff may receive the same fees as for like services in a civil action. At any time before said sale, the owner may redeem said property from said lien, upon paying the costs and judgment, when rendered, or amount of said claim and costs.

25-2207. Disposition of surplus money.--Upon the sale of any property as provided in this chapter, and after the payment of all damages, expenses and costs, the overplus, if any there be, must be paid over to the justice, and if not demanded by the owner of said property within ninety days from the date of said sale, seventy-five percent thereof must be paid by said justice into the county treasury for the benefit of the common school fund, and twenty-five per cent, the balance thereof, to the person taking and impounding said animal as compensation for his services.

25-2208. Appeals--Proceedings in district court.--Nothing in this chapter contained prevents appeals as in civil cases. If in any case the amount of such damages equals or exceeds $300.00, proceedings to sell said property may be had in the district court.

Idaho Code - 1947. Title 25, Chapter 23. Estrays

25-2301. Taking up estrays.--Any animal or animals running at large in this state without sufficient food or shelter at any time between the first day of November and the first day of March, and any bull old enough for service found running at large between the first day of November and the first day of May, and any animal or animals that break or jump, more than once, into any field or other inclosure surrounded by a lawful fence, may be taken up by any resident of this state, who shall immediately notify the constable of the precinct in which such animal or animals may be found, or if there be no duly qualified constable in said precinct, then the nearest constable of any other precinct in the county in which such animal or animals may be found, or the sheriff of such county, who shall proceed in the following manner.

25-2302. Duty of constable of sheriff--Notice given--Contents--Sale of estray.--If the owner is known, he shall, within two days, notify such owner in writing, describing the animal or animals and where he may obtain the same, and if the owner fails, neglects or refuses to claim said animal or animals, or to pay the charges thereon within five days from receipt of such notice, then the constable or sheriff shall proceed at once to advertise the said animal or animals for sale, by posting notices in three public places in the precinct where said animal or animals are in custody, and by mailing a copy of said notice to the state brand inspector.

Said notice shall contain a description of the said animal or animals by giving their marks, brands, age as near as same may be ascertained, sex, and color, and when and where same will be sold, which date of sale must be not less than fifteen nor more than twenty days after notice to said owner has been given, and such sale must be made in some public place in said precinct where said estray animal or animals have been taken up, and the moneys received from the proceeds of said sale shall be disposed of as provided in section 25-2310.

25-2303. Unknown owner--Description of estray sent to state brand inspector.--If the owner is unknown, then he shall at once send by registered mail, to the state brand inspector, a written notice describing the animal or animals so taken by marks, brands, age, sex, kind and color as nearly as the same may be determined and where said animal or animals are held and shall search diligently on said animal or animals for marks or brands.

25-2304. Duty of state brand inspector--Fee for search and notice.--If the brand on said animal or animals is recorded, then the state brand inspector shall immediately send, by registered mail, to the recorded owner, to the post office address as stated in the brand book, a copy of such notice, and shall notify the said constable or sheriff, in the same manner, of the name and address of such owner, and, if the name of the owner of the brand cannot be found in the brand book of record, then the state brand inspector shall immediately, by registered letter, notify the said constable or sheriff that the brand is not recorded. The state brand inspector shall keep all such notices on file for forty days after receipt of same whether the animals therein described are branded or not and shall answer all inquiries promptly by mail, or otherwise, where there is probability of the inquirer being the owner of the animals described in the notice. The state brand inspector shall be entitled to a fee of fifty cents for making the search and giving the notice herein required, which fee shall be paid by the officer as a part of the costs out of the proceeds of the redemption or sale of the estray or estrays, and the same shall be paid into the agricultural department inspection fund.

25-2305. Procedure when brand recorded.--If the said constable or sheriff receives notice from the state brand inspector that the brand described as being on said animal or animals is recorded, and the owner of the recorded brand has been notified, he shall wait five days after receiving said notice before advertising the sale thereof and shall then proceed as in section 25-2302, where the owner is known.

25-2306. Advertisement of sale.--If, however, said constable or sheriff receives notice that the brand described be not recorded, he shall at once advertise the said animal or animals for sale in the newspaper published in said county nearest the place where said animal or animals are held, and if no newspaper is published in said county, then he shall give notice of the said sale of said animal or animals by posting notices thereof in three public and conspicuous places within said county, one of which shall be at the courthouse door. Said published or posted notice shall describe said animal or animals by giving their marks and brands, age, as near as may be ascertained, sex, and color, and when and where the same will be sold, which notice, if published in a newspaper must be published once a week for two successive weeks, not less than six days shall elapse between publications, and if by posting, must be posted for a period of ten successive days, and the sale must not be less than fifteen days from the date of the first publication, or of the posting of said notice, and such sale must be made in some public place in the precinct where the estray animal or animals have been taken up.

25-2307 . Disposition of worthless estrays.--If, in the justment of said constable or sheriff, any such animal is of no value, or of a value less than the probable cost of advertising such animal for sale and of its care and keep during the period it is required to be advertised for sale by this chapter, then such constable or sheriff shall make an affidavit reciting such facts of value and probable costs and particularly describing such animal, and file such affidavit with the justice of the peace of the precinct in which said animals were taken up, or if there be no justice in the said precinct, then with any justice in the county, and shall send a copy of such affidavit to the State brand inspector. Such justice shall thereupon take the testimony of at least two disinterested witnesses who have inspected said animal or animals, touching the matters recited in such affidavit; and, if it appears from such testimony to the satisfaction of such justice that the matters set forth in such affidavit are true, then such justice shall make an order directing that such animal be killed and deliver a copy thereof to such constable or sheriff, and upon receipt thereof, such constable or sheriff shall wait five days and then proceed to kill such animal, and no advertisement thereof for sale need be had; provided, however, that if such animal is branded with a recorded brand, and such animal is found to be of any value whatever, then such justice by such order shall direct that it be not killed until ten days after notice has been received from the said bureau of registration that such brand is recorded. If the owner appears to claim said animal or animals, they shall be delivered upon payment of costs as provided in section 25-2308. It shall be the duty of such constable or sheriff to make proper and lawful disposition of the carcass of any animal killed pursuant to such order. The costs of disposition of carcasses and killing of animals shall be paid by the county in which said animals are taken up.

25-2308. Claiming of animals.--If any person appears before the constable or sheriff and claims said animal or animals before such sale, then, if such person appears to be the owner of such animal or animals, such constable or sheriff shall deliver such animals to the owner on his paying all costs of caring for, sending and preparing notices, and advertising the same as herein provided.

25-2309. Sale of unclaimed animals.--If no person appears and claims said animal or animals on or before the day advertised for the sale, then, such constable or

sheriff shall proceed to sell the same to the highest bidder for cash and give a bill of sale to the purchaser or purchasers and shall cause the same to be branded with the estray brand which shall be E inside a circle on the left side of the neck and the purchaser shall thereupon become the owner of said animal or animals.

25-2310. Disposition of proceeds of sales.--Out of the moneys received from such sale, he shall first pay the costs of advertising, sending and preparing notices, publishing or posting same and selling such animal or animals, and the cost of feeding the same as provided herein, and if any moneys are remaining, he shall turn the same over to the treasurer of the school district where said animal or animals was or were taken up, for the benefit of said school district.

25-2311. Rates for care, advertising and sale.--For the feeding and caring for such animals, the person taking it or them up shall receive fifty cents per head per day for cattle and horses, and twenty-five cents per head per day for other animals, from the time of giving notice to the constable or sheriff until he surrenders possession thereof; the sheriff or constable shall receive like costs for the time he has such animal or animals in his possession; for writing and sending notices to the state brand inspector he shall receive fifty cents; for selling the said animal or animals, he shall receive one dollar for the first head and fifty cents per head for each additional animal sold at the same time and place. The state brand inspector shall receive fifty cents for each notice sent; the publishers shall receive legal rates for advertising each animal.

25-2312. Owner to recover excess proceeds.--At any time within six months after receiving said moneys by the treasurer of said school district, any person claiming to be the owner of the animal or animals sold, may recover said money from the treasurer upon producing proof that the said animal or animals was or were his property before the constable or sheriff who made the sale of same, or his successor in office, to his satisfaction, which proof must be reduced to x writing and must be made under oath, and for such purpose said constable or sheriff is empowered to administer oaths to the claimant or his witnesses. Upon making such proof, the constable or sheriff shall give such claimant an order on the treasurer, who shall retain such order until the six months have expired, and if such claimant is the only person claiming the same, said treasurer shall turn over such moneys to him, but if there be more than one claimant of said moneys, then such contestant claimants must bring their action within three months to determine who was the owner of the animal or animals sold, in the justice's court having jurisdiction, and the claimant receiving judgment in his favor shall be entitled to said moneys and in case the ownership of said property be not proved as provided in this section, within said time, then the moneys so turned over to said treasurer shall be forfeited to said school district for the benefit of the schools of said district, and the owner shall be forever barred from recovering the same.

25-2313. Neglect of officer.--Any constable or sheriff wilfully or negligently failing to comply with any of the provisions of this chapter shall be liable to any person injured for all damages he may sustain by reason of such failures.

25-2314. Unbranded animals on public range--disposition as estrays.--All animals over the age of twelve months ranging upon what is known as the public range, and bearing no marks or brands may be taken up by the finder thereof and where so taken up such animals shall be delivered to the constable of the nearest precinct, who shall dispose of said animals in the same manner as is now provided by law for the disposition of estray animals. And the proceeds of all sales in pursuance of this section shall be turned over to the county treasurer to be placed in the public school fund of the county.

25-2315. Duties of municipal police.--All the foregoing sections of this chapter shall apply and regulate estrays in incorporated villages and cities; and the duties imposed on sheriffs and constables herein shall apply and regulate in a like manner the police force of all incorporated cities and villages; provided, that nothing in this chapter shall be construed as prohibiting any incorporated city of village from regulating the running at large of said estrays within any incorporated city or village.

Idaho Code - 1947. Title 25, Chapter 24. Herd Districts

25-2401. Commissioners may create herd districts.--The board of county commissioners of each county in the state shall have power to create herd districts within such county as hereinafter provided; and when such district is so created the provisions of this chapter shall apply and be enforcible therein.

25-2402. Petition for district.--A majority of the land owners in any area which shall include one or more voting precincts and who are also qualified electors of any such precinct may petition the board of county commissioners in writing to create such area a herd district. Such petition shall describe the boundaries of the proposed herd district and shall designate what animals of the species of horses, mules, asses, cattle, swine, sheep and goats it is desired to prohibit from running at large, also prohibiting said animals from being herded upon the public highways in such district; and may designate the period of the year during which it is desired to prohibit such animals from running at large or being herded on the highways.

25-2403. Notice of hearing petition.--It shall be the duty of the board of county commissioners, after such petition has been filed, to set a date for hearing said petition, notice of which hearing shall be given by posting notices thereof in three conspicuous places in the proposed herd district, and by publication for two weeks previous to said hearing in a newspaper published in the county nearest the proposed herd district.

25-2404. Order creating district.--At such hearing, if satisfied that a majority of the electors who are land owners in said proposed herd district are in favor of the enforcement of the herd law therein, and that it would be beneficial to such district, the board of commissioners shall make an order creating such herd district, in accordance with the prayer of the petition, or with such modifications as it may choose to make. Such order shall specify a certain time at which it shall take effect, which time shall be at least thirty days after the making of said order, and said order shall continue in force, according to the terms thereof, until the same shall be vacated or modified by the board of commissioners, upon the petition of a majority of the electors who are land owners in said district.

25-2405. Fences on agricultural lands adjacent to public domain--cattle guards.--The board of county commissioners may provide as a condition in any order creating a herd district which may hereafter be made that any agricultural lands in the proximity of public domain where cattle, horses or mules are grazed, shall be enclosed by a lawful fence and that any road extending from agricultural area to such public domain shall contain cattle guards or gates at such places and of such nature as the board shall prescribe. The board of county commissioners may make its herd district orders inapplicable to cattle, horses or mules straying from such public domain or along roads leading to such public domain until such agricultural lands are enclosed by lawful fence and such cattle guards or gates are installed.

25-2406. Limitation on powers of commissioners.--The provisions of sections 25-2401 and 25-2405 shall not be construed to confer upon the board of county commissioners any jurisdiction over animals otherwise prohibited from running at large under existing laws.

25-2407. Violation of commissioners order--Criminal liability.--Any person who shall, in violation of any order made pursuant to the provisions of section 25-2404, permit or allow any of the animals designated in such order, owned by him or under his control, to run at large in such herd district, or to be herded on the said highway, shall be deemed guilty of a misdemeanor. The pendency of any such action shall not prevent nor prejudice the bringing of another action against the same party for a violation of such order committed after the commencement of such pending action.

25-2408. Civil Liability.--The owner of animals permitted or allowed to run at large, or herded in violation of any order made in accordance with the provisions of section 25-2404, shall be liable to any person who shall suffer damage from the depredations or trespasses of such animals, without regard to the condition of his fence; and the person so damaged shall have a lien upon said animals for the amount of damage done and the cost of the proceedings to recover the same, and may take the animals into custody until all such damages are paid; provided, that the person so taking said animals into custody shall not have the right to retain the same for more than five days without commencing an action against the owner thereof for such damages. Said damages may be recovered by a civil action before any court of competent jurisdiction and no such action shall be defeated or affected by reason of any criminal action commenced or prosecuted against the same party under the provisions of the preceding section.

25-2409. Trespassing animals may be taken up.--Any person may take into custody any of the animals specified in the said order of the board of commissioners that may be about to commit a trespass upon the premises owned, occupied, or in charge of such person, and retain the same until all reasonable charges for keeping said animals are paid; provided, that it shall be the duty of the person so taking said animals into custody to notify the owner or person in charge of the same within five days thereafter, and if the owner or person in charge of them shall not be known to the person so taking said animals into custody, and cannot be found after diligent search and inquiry, he may proceed in the manner provided for the taking up and disposal of estrays.

Idaho Code - 1947. Assessment for taxation.

63-207. Subsequent assessment of property concealed.--Any property wilfully concealed, removed, transferred, misrepresented or not listed by the owner, or the agent or representative of the owner, to evade taxation for the current year, or in any preceding year or years, must upon discovery be assessed at three times its value for each year such property has escaped assessment, and the assessment so made must not be reduced by the board of county commissioners.

PRESIDENT
CLYDE STARR, SALMON

SECRETARY
LEON L. WEEKS, BOISE

IDAHO CATTLEMEN'S ASSOCIATION
BOX 2368
BOISE, IDAHO

BUREAU OF BRANDS, STATE HOUSE, BOISE, IDAHO.

R. J. HAWES, TWIN FALLS	CHAIRMAN OF THE BOARD
LYMAN IPSEN, MALAD	BOARD MEMBER
CARL E. HARRIS, LEWISTON	BOARD MEMBER
O. J. SHAW, BOISE	STATE BRAND INSPECTOR

Following is a digest of LAW and REGULATIONS pertaining to BRAND INSPECTION in the STATE OF IDAHO. This is given you by the Association through the cooperation and help of the new BUREAU OF BRANDS

WE SUGGEST YOU PUT THIS IN A SAFE PLACE WHERE YOU CAN REFER TO IT AT ANY TIME - SEVERAL MEMBERS SAY THEY INTEND TO CARRY THEM IN THE GLOVE COMPARTMENT OF THEIR CAR OR PICKUP.

Please remember we have a new Brand Law which is to be run by the cattlemen. Therefore, please cooperate with the inspectors and your neighbors by having proper identification when you move your cattle. REMEMBER, we must all get behind this to make it work. These Laws were made by the Association for the stockman's protection.

BRANDING

1. There is a law in the State of Idaho requiring all livestock in this state to be branded.
2. It is unlawful to brand livestock with other than a recorded brand.
3. The recorded brand must be placed in the correct location on the animal.
4. It is unlawful to change, conceal, deface, disfigure or obliterate any brand or mark, or put another brand over any part of a brand previously branded.
5. It is unlawful to cut to a point, cut off or remove more than one half of one ear of any head of livestock.
6. No brand is to be used by more than one person on any one location of the animal.
7. A recorded brand on an animal shall be prima facie evidence of ownership in Court.
8. Persons having livestock in their possession branded with registered brands not recorded by them, must have in their possession at all times, satisfactory proof of ownership of such livestock.

BRAND RECORDING

1. All brands are to be recorded first with the State in the Bureau of Brands, and then in the county or counties in which the livestock graze or range.

2. Every stockgrower must use one and only one brand on cattle, one and only one brand for horses, mules and asses, and one and only one brand on sheep.

3. All brands are recorded for a set period of five years, and all are to be renewed at the same time. This period ends July 1, 1949.

4. The fee for the full five years is $1.50, which fee decreases as the length of time in the five year period decreases.

5. The renewal fee is the same as the recording fee.

6. All brands not renewed within a reasonable time after the renewal date become delinquent, usually not to exceed six months.

7. The fee for additional copies of the registration certificate is fifty cents (50¢).

8. All sales and transfers of brands should be made through the Department of Law Enforcement, Bureau of Brands.

9. The State Brand Board has the right to reject or prevent the use of any similar or infringing brands, also to settle disputes of ownership and priority of brands.

BRAND BOOK

1. A brand book shall be published at least once every five years, with supplements at intervals.

2. Said books and supplements are to be sold at a price not to exceed the cost of making.

BRAND INSPECTION

1. The inspection fee for brand inspection on cattle, horses, mules, and asses shall be ten cents (10¢) for less than carload lots, up until fee money is available to carry on program.

2. Railroad carload lots are two dollars ($2.) for the first car and one dollar ($1.) for each additional car up to ten cars. Charge not to exceed eleven dollars ($11.) for the inspection in any one day for the same person.

3. Fee inspection under the butcher law is twenty-five cents (25¢) per head for each beef hide and carcass and ten cents (10¢) for each veal hide and carcass.

4. Cattle purchased outside the State of Idaho by Idaho residents will be considered Idaho cattle on entering the state and a regular fee charge will be made.

5. Before a brand inspection Certificate can be issued, proof of ownership must be established.

6. Cattle moving upon the highways may be taken into the possession of a brand inspector or peace officer and detained by him without liability,

at the expense of the owners thereof, until the ownership of such animals can be established.

7. All livestock shall be accompanied by the following while in transit: a written permit or a brand inspection certificate.

8. The term "written permit" shall mean a statement in writing describing the animals and bearing the signature of and dated by the person in whose name the brand on such animals is recorded and authorizing the transportation of such animals naming the place of origin and of destination of such transportation and the consignee thereof and his address.

9. The term "brand inspection certificate" shall mean a certificate of a brand inspector describing the animals mentioned therein, and stating the name and address of the owner of such animals, the name and address of each consignor and consignee in the transportation of such animals and naming the place of origin and of destination of such transportation.

10. The "Certificate of ownership" is outlawed as of July 1, 1947, and shall not be used.

11. All cattle, horses, mules and asses must be accompanied by a brand inspection certificate when leaving the state.

12. It is unlawful to refuse inspection.

13. All stock being transported by any conveyance of any kind upon public highways within the state during the period from sunset to sunrise must have an inspection certificate issued by a brand inspector, or a certified copy of the owners recorded iron, if accompanied by the owner, or a written permit if not accompanied by the owner.

14. A vehicle used in the transportation of stolen livestock may be confiscated by the state, and sold at public auction.

LIVESTOCK ON THE RANGE

1. It shall be unlawful to drive, ride, lead or assist in driving, riding, or leading anothers livestock from its usual range.

2. It is unlawful to use or have in your possession, a running iron.

3. It is unlawful to slaughter any head of cattle at any place more than one half mile from a house or corral in actual use.

4. It is unlawful for a person to skin or remove from the carcass the skin, hide, or pelt of any meat animal found dead or perished except by the owner or his agent.

5. 24-1606 (Idaho Code Annotated) Slaughtering Unbranded Cattle.~~0~~- Any person who slaughters any head of meat cattle, before the same is distinctly marked or branded is guilty of a misdemeanor.

BUTCHER LAW

1. "Butcher"--Every person, firm, corporation, or association who at a fixed place slaughters meat animals for wholesale or retail sale.

2. "Meat Dealer"--Any person at a fixed place of business sells or exchanges

meat or by-products of meat animals.

3. "Meat Peddler"--all persons who go from place to place offering for sale any meat or by-product of meat animals to any meat dealers.

4. Butchers, meat dealers and meat peddlers shall register their names with the County Recorder in the county in which they do business, on or before the tenth day of January, each year, fee being 50¢.

5. Every butcher, meat dealer and meat peddler shall have carcasses of animals and the hides inspected within 48 hours after slaughter.

6. Every meat dealer shall put up a bond with the Probate Judge of his respective county.

7. Every meat dealer shall keep a true and correct record of all meat animals slaughtered, or quarters of meat animals purchased. This record shall be kept at all times and disclose the marks and brands on such animals slaughtered by him. This record shall be kept for a period of three years after such entries are made.

ESTRAYS

1. Estrays are any animals running at large without sufficient food or shelter, between the first day of November and the first day of March; any bull old enough for service found running at large between November first and May first, and animals that break or jump, more than once into any field or enclosure surrounded by lawful fence.

2. People taking up estrays should immediately notify the constable of the precinct or the sheriff of the county.

FEEDER CATTLE

1. The Bureau of Brands encourage owners of feed yards to brand cattle for clearance.

2. Encourage the owners of feed yards to hold separate until the inspection is made by brand inspectors in order to record the movement of livestock.

The Brand Board shall set a levy each year not exceeding 5 mills of the assessed valuation of cattle, horses, mules and asses for the purpose of paying the expenses of the Bureau of Brands. The Board expects to drop the 10¢ per head inspection fee just as soon as the tax money is available which should be around January, 1948.

Coffey

THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

UNITED STATES
DEPARTMENT OF THE INTERIOR
DOUGLAS Mc KAY , Secretary
BUREAU OF LAND MANAGEMENT
EDWARD WOOZLEY , Administrator

MARCH 3, 1849

May , 1953

Washington 25 , D. C.

Circular No. 1811

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

PART 161—THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

161.1 Introductory; basic policy and plan of administration.

161.2 Definitions.

161.3 Qualifications of applicants.

161.4 Classification of base properties.

161.5 Rating and classification of Federal range.

161.6 Issuance of licenses and permits.

161.7 Transfers of base properties and licenses or permits.

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161.10 General rules of the range.

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161.14 Construction and maintenance of improvements on the Federal range.

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161.17 Saving clause.

Reprint of the Federal Range Code for Grazing Districts, as amended. Sections 161.6 (c)(10), (11) and (13), 161.8(b) and (c), 161.9(a), (c) and (f), 161.11(d), and 161.12(j), (k) and (l) were amended by Circular No. 1736 of August 31, 1949. The note following section 161.8(b) was amended by Circular No. 1780 of January 3, 1951.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

161.1 Introductory; basic policy and plan of administration.

(a) Purposes; general requirements. Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promote the highest use of the public lands within grazing districts which have been or hereafter are established, possession of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the public domain will be required of all users.

(b) Preference applicants. Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner provided in this section. Provision will be made for other applicants so far as Federal range remains available.

(c) Permits; temporary licenses; termination; revocation. Permits within the meaning of section 3 of the act may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing, a recommendation thereon made by the advisory board, and approval thereof given by the range manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. During the period prior to the issuance of permits, the issuance of temporary licenses will be continued. Upon the issuance of a permit within any district or portion thereof, any outstanding license or part thereof which has been granted on the basis of the qualifications on which the permit is based will be terminated. Licenses and permits will be revocable for violations of the terms thereof or for a violation of any provision of the Federal Range Code for Grazing Districts, as provided in this part. (Secs. 2, 3, 48 Stat. 1270; 43 U.S.C. 315a, 315b)

161.2 Definitions. Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management, unless the context otherwise requires:

(a) The act means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315--315m, 315n--315o-1), and all amendments thereto.

(b) The Federal Range Code for Grazing Districts means all of the rules and regulations pertaining to the administration of grazing districts.

(c) Federal range means land owned, leased, or otherwise controlled by the United States and administered by the Bureau of Land Management, Provided, That land under the control of another agency and administered by the Bureau of Land Management under cooperative agreement may be excluded from the scope of this definition by the agreement.

(d) Property means privately owned or controlled land or water used in range livestock operations.

(e) Base property means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(f) Forage land means land the principal use of which is the production of natural or cultivated feed for livestock.

(g) Land dependent by use means forage land which is of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the 5-year period immediately preceding June 28, 1934 (referred to in this part as the "priority period"), was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years in connection with substantially the same part of the public domain, now part of the Federal range, except that in any area placed within a grazing district after June 28, 1938, or in any area added to an existing grazing district after that date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be, Provided, That in any case in which a livestock operation used a base property or properties during the priority period in such manner as would, in the absence of other factors, serve to invest the property with the attribute of dependency by use, but such livestock operation subsequently ceased using such property or properties and used other base property or properties in such manner as to invest them also with dependency by use, only the latter property or properties shall be considered as dependent by use unless the former are dependent by use by reason of use by another livestock operation, Provided further, That in no event shall any land be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year from the date when the public land used in creating the dependency by use first became a part of a grazing district, except that in cases in which the lands used in creating dependency by use of a base property became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date.

The extent of the dependency by use of land shall be subject to the following:

(1) The dependency by use in no event shall exceed the average annual amount of forage that was customarily and properly utilized by the livestock operation during the priority period on that part of the public lands which, at the time of the issuance of the license or permit, is Federal range.

(2) In the event that the area of Federal range which was used in creating the dependency by use is diminished by withdrawal, appropriation, selection, or otherwise, the dependency by use shall diminish proportionately.

(3) Whenever dependency by use of more than one base property was created by the use of all or a part of certain range which was used jointly or at different seasons of the year by one or more other livestock operations in such a manner as to invest another base property or properties with the attribute of dependency by use, the relative dependency by use of each of the properties shall be proportionate to the average annual use made of the range by each of the operations.

(h) Land dependent by location means forage land which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(i) Animal-unit month, as applied to lands that are base properties, means the amount of natural or cultivated feed necessary for the complete sustenance of one cow for a period of one month; as applied to Federal range, it means that amount of grazing privileges represented by the grazing of one cow for a period of one month. For the purpose of this definition, one cow will be considered the equivalent of one horse or five sheep or five goats.

(j) Carrying capacity means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(k) Full-time water means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(l) Prior water is water which, during all or a substantial part of the five-year period immediately preceding June 28, 1934 (referred to in this part as the "priority period"), was used to service certain public range within the service area of the water for a livestock operation that was established, permanent, and continuing, and which, during the period of such use, normally involved the grazing of livestock on the same areas of public land for a certain period or periods of each year, except that in any area placed within a grazing district or added to an existing district after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be, Provided, That in any case in which a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, serve to invest such water with the attribute of priority, but such livestock operations subsequently ceased using such water or waters and used other water or waters in such manner as to invest them also with priority, only the latter water or waters shall be considered as prior unless the former are prior because of use by another livestock operation, Provided further, That in no event shall any water be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district, except that in cases wherein such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

The extent of the priority of water shall be subject to the following:

(1) The priority in no event shall exceed the average annual amount of forage that was customarily and properly utilized by the livestock operation during the priority period on that part of the lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(2) In the event that the area of Federal range which was used in creating the priority is diminished by withdrawal, appropriation, selection, or otherwise, the priority of the water shall diminish proportionately.

(m) Service area means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

(n) Free-use applicant means an applicant who resides in the immediate neighborhood of Federal range and who owns livestock kept for domestic purposes. "Livestock kept for domestic purposes" means livestock whose products are consumed or whose work is used directly and exclusively by the family of the applicant. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.3 Qualifications of applicants.

(a) Definition of qualifications. An applicant for a grazing license or permit is qualified if engaged in the livestock business and:

(1) Is a citizen of the United States, or

(2) Has filed a declaration of intention to become a citizen: Provided, That an applicant who has filed such declaration but has not filed a petition for naturalization before a court of competent jurisdiction within seven years from the date of filing the declaration or, having filed such petition, has failed to attain citizenship within a reasonable time thereafter and is unable to show any

satisfactory reason for such failure, shall be disqualified to receive a license or permit or any renewal thereof until he has actually attained citizenship, and any existing license or permit held by such person shall become void at the end of the grazing season during which the disqualification arises, or

(3) Is a group, association, or corporation which is authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, and the controlling interest in which is vested in a citizen or citizens or persons who would be qualified as individual applicants under subparagraph (2) of this paragraph.

(b) Effect of disqualification arising through operation of law. Notwithstanding the above provisions of this section, the acquisition of rights in base property by an unqualified applicant through operation of law or testamentary disposition will not affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, to the extent based on such property, for a period of two years after such acquisition. (Sec. 3, 48 Stat. 1270; 43 U.S.C. 315b)

161.4 Classification of base properties. For the purpose of determining the proper use of the base properties of all applicants and their relative dependence upon the Federal range, land and water conditions and other factors affecting livestock operations in the area will be considered and determined according to customary use and best practices for good range management. Base properties will be classified as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

(sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.5 Rating and classification of Federal range.

(a) Carrying capacity; seasons and maximum annual period of use. For the purpose of stabilizing the livestock industry, determining the proper use of the Federal range, and other purposes, the carrying capacity of each administrative unit or area in a grazing district will be rated, and each will be classified for the proper season, or seasons, if necessary, of its use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range lying therein during any one year.

(b) Wildlife; allowance for maintenance. In each grazing district a sufficient carrying capacity of Federal range will be provided, following consultation with and the advice of wildlife interests, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) Segregation of ranges for particular kinds of livestock. When the proper use of the Federal range or an orderly administration of the act requires it, certain areas may be designated for use exclusively by a certain kind or class of livestock. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.6 Issuance of licenses and permits.

(a) Free-use licenses and permits. Free-use licenses or permits first will be issued to free-use applicants for not to exceed the number of livestock kept for domestic purposes. Such livestock shall be grazed on Federal range in the immediate neighborhood of the residence of the licensee or permittee. (Sec. 5, 48 Stat. 1271; 43 U.S.C. 315d)

(b) Regular licenses and permits; order of issuance; number of livestock. Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(1) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(2) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

(3) To other applicants, licenses or permits for the number of livestock for which range is available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

After licenses or permits have been issued on the basis of the foregoing, any licensee or permittee may, within the discretion of the range manager, and on written order by him, be allowed to use the amount of Federal range grazing privileges represented by his license or permit over any period of time within the season or seasons for which the Federal range is classified as proper for use, Provided,

(i) Such period does not exceed the maximum period of time for which any licensee or permittee is allowed to use the Federal range during any one year;

(ii) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(iii) Such use will not be detrimental to the Federal range; and

(iv) Such use will not adversely affect other licensees or permittees. (Sec. 3, 48 Stat. 1270; 43 U.S.C. 315b)

(c) Terms and conditions. The issuance and continued effectiveness of all regular licenses and permits will be subject to the following conditions and requirements:

(1) No license or permit will be issued to any applicant unless he is able to show that he possesses adequate feed to support his licensed or permitted livestock during the period of time for which they are to be off the Federal range.

(2) No license or permit will provide for the grazing of livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the carrying capacity of the range to be used.

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately.

(6) If at any time during the life of a license or permit the holder thereof ceases to make substantial use of his base property in connection with his year-round livestock operation, the license or permit will be subject to a proportionate reduction.

(7) If at any time during the life of a license or permit the holder thereof loses ownership or control either of all or a part of his base property or of all or a part of such other lands or grazing privileges as are necessary to his year-round livestock operation, and fails within a reasonable time, as directed by the range manager after submission of the matter to the advisory board for recommendation, to obtain ownership or control of other base property, lands or grazing privileges sufficient to insure such a year-round operation, the license or permit will be subject to a proportionate reduction.

(8) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(9) In the event of failure for any two consecutive years either to offer a base property in an application for a license or permit, or to accept a license or permit offered pursuant to such an application, such base property will lose its dependency by use or priority.

(10) The failure for any two consecutive years to make substantial use of the grazing privileges, authorized under an accepted license or permit, may result in the loss of the dependency by use or priority of the base property in proportion to the failure to use such license or permit.

(11) Non-use, in whole or in part, of a license or permit may be authorized by the range manager upon application by the licensee or permittee, after reference to the advisory board for recommendation, for the following reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit because of a violation of any of the provisions of the Federal Range Code for Grazing Districts may result in the loss of the dependency

by use or priority of the base property upon which the license or permit is based. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

(13) In order to stabilize livestock operations dependent upon the Federal range, no readjudication of any license or permit will be made on the claim of any applicant or intervener with respect to the dependency by use or priority of the base property where such qualification, upon which the license or permit was issued, has been recognized for a period of three years or more, except in a case where such qualification would otherwise be subject to adjustment under the provisions of this part.

(d) Applicants having more than one class of property; reductions; allotments; agreements. Nothing contained in this section will prevent an applicant who owns or controls properties in more than one class from having such properties considered separately in the order and manner set forth in this section. If necessary to reach the carrying capacity of any parts of the Federal range after licenses or permits have been issued, reductions on an equal percentage basis will be imposed on licensees or permittees so far as their grazing activities involve the use of such parts. Reductions in all cases will be made by reducing the numbers of livestock or the time on the Federal range area involved, or by both methods, Provided, That the regional administrator may recommend, for the approval of the Secretary of the Interior, a limit below which no license or permit in that area will be reduced. Allotments of Federal range will be made to licensees or permittees when conditions warrant, and divisions of the range by agreement or by former practice will be respected and followed where practicable. Increases in carrying capacity will be participated in by existing licensees and permittees to the extent of their respective qualifications. Licenses or permits to use any range available thereafter may be granted to other applicants. (Sec. 2, 48 Stat.1270; 43 U.S.C. 315a)

(e) Administration of lands additionally available. Any land added to a grazing district, or otherwise made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315m-1--315m-4), the revocation of a withdrawal, or the cancellation or relinquishment of a homestead entry or claim, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management. (Secs. 2, 3, 48 Stat. 1270; 43 U.S.C. 315a, 315b) (52 Stat. 1033; 43 U.S.C. 315m-1--315m-4)

(f) Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940. Any licensee or permittee who enters military service, as defined in section 101 (1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179: 50 U.S.C. 511 (1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the range manager an application, in triplicate, the original of which shall be sworn to before a notary public or other officer authorized to administer oaths in the State in which the applicant resides, or before the officer in immediate command and holding a commission in the branch of the Service in which the applicant is engaged, which shall set forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the range manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner terminated upon further application to the range manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, such a temporary license shall be revocable as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the range manager on an application for suspension or termination of a license or permit may be appealed by the applicant, licensee, or permittee to an examiner of the Bureau of Land Management, and from his decision to the Director of the Bureau and to the Secretary of the Interior, respectively. The procedure in such appeals shall conform as nearly as practicable to the procedure prescribed in section 161.9. (Secs. 2, 3, 9, 48 Stat. 1270, 1271; 43 U.S.C. 315a, 315b, 315h) (Secs. 501, 507, 54 Stat. 1187, 1188; 50 U.S.C. 561, 567)

161.7 Transfers of base properties and licenses or permits.

(a) Transfer of base property: effect. A transfer of a base property, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if otherwise properly qualified, to all or to such part of a license or permit as is based on the property transferred, and the original license or permit will be terminated or decreased by such transfer. In any instance in which a transfer, or a different vesting in any manner, of a leasehold interest in land may result in an interference with the stability of livestock operations or with proper range management, such land will lose its dependency by use or dependency by location, as the case may be, upon a find to that effect by the regional administrator, after reference of the matter to the district advisory board for its recommendation.

(b) Transfer of a license or permit; limitations; effects; consent of owner or encumbrancer. Upon application by a licensee or permittee, and after reference to the advisory board for recommendation, the range manager may allow a license or permit based on ownership or control of land to be transferred to other land or a license or permit based on ownership or control of water to be transferred to other water within the same service area, Provided, That such transfer will not interfere with the stability of livestock operations or with proper range management and will not affect adversely the established local economy, Provided further, That no such transfer will be allowed without the written consent of the owner or owners and any encumbrancers of the base property from which the transfer is to be made, except that when the applicant for such transfer is a lessee without whose established livestock operations such property would not have dependency by use or priority, such consent will not be required. Upon the allowance of a transfer under this paragraph, the base property from which the transfer is made shall lose its dependency by use or priority to the extent of the license or permit transferred.

(c) Transfer of dependency by use on same land. Whenever a licensee or permittee owns or controls land dependent by use which has a carrying capacity in excess of that necessary for the support of the licensed or permitted livestock during that period of the year for which they are to be kept on such land, the excess land may be disposed of or may be used for purposes other than the support of such livestock; upon application by the licensee or permittee, and after reference to the advisory board for recommendation, the range manager may allow the dependency by use allocable to such land to be transferred to that part which continues to be used for the support of such livestock Provided, That no such transfer will be allowed without the written consent of the owner or owners and any encumbrancers of the land from which the transfer is to be made. Upon the allowance of a transfer under this paragraph, the land from which the transfer is made shall lose its dependency by use. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.8 Fees; time of payment; refunds.

(a) Free-use licenses and permits. No fee will be charged for the issuance of a free-use license or permit.

(b) Regular licenses and permits. Each regular licensee or permittee will be charged for each head of livestock, for each month covered by the license or permit, a grazing fee for the use of the range and a range improvement fee. Range improvement fees, upon the recommendation of the district advisory board and approval of the Secretary, may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any governmental agency--State or Federal, or any person, association, or corporation. Grazing and range improvement fees will be assessed on the basis of semi-monthly periods, beginning on the first and sixteenth day of the month and ending, respectively, on the fifteenth and the last day of the month. All livestock six months of age or over and allowed on the Federal range, will be counted at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No grazing or range improvement fees will be charged for livestock under six months of age. A minimum annual charge of $1.00 will be made on all regular licenses or permits.

Note: In accordance with the provisions of section 161.8 (b) of the Federal Range Code for Grazing Districts (Circular 1736, 14 F. R. 5509, September 7, 1949) notice is hereby given that effective May 1, 1951; and pursuant to the act of June 28, 1934 (48 Stat. 1275) as amended, a grazing fee of ten cents per animal unit month and a range improvement fee of two cents per animal unit month will be charged each regular licensee or permittee for each month of the grazing period covered by the license or permit, as follows:

1. Grazing fee - 10 cents per head for cattle and horses,
   2 cents per head for sheep and goats.

2. Range improvement fee - 2 cents per head for cattle and horses,
   two-fifths cent per head for sheep and goats.

Provided, That as to licenses or fee notices issued prior to January 15, 1951, no increase in fees shall be effected hereunder as to such licenses or fee notices until the next license or fee notice is issued.

This notice will not prevent the fixing of a different fee in appropriate cases, in accordance with the provisions of section 161.8 (b) of the Federal Range Code for Grazing Districts.

(c) Crossing permits. Unless notice is otherwise given, a fee of one-half of a cent per head per day, for cattle and horses, and one-tenth of a cent per head per day, for sheep and goats, will be charged for a crossing permit, which will be issued upon application by any person showing the necessity of crossing the Federal range for proper and lawful purposes: Provided, That in cases where the trail to be used is so limited and defined that no material amount of forage will be consumed in transit the permit will be issued without charge: Provided further, That no fee will be charged for a crossing permit to the extent that it involves the use of a stock driveway created under section 10 of the stock-raising homestead act of December 29, 1916 (39 Stat. 862; 43 U.S.C. 300).

(d) Payment of fees; reduction or increase in numbers; extension of periods of use. All fees for crossing permits shall be paid at the time of the issuance of the permit. Payments of fees for regular licenses or permits shall be made prior to the beginning of each grazing period shown on the license or permit. Licenses or permits will be effective only when all fees due thereunder have been paid. No license or permit shall be issued or renewed until payment of all amounts found to be due to the United States under the Federal Range Code for Grazing Districts has been made. Upon application by a transferee of any property or part thereof on the basis of which a license or permit has been issued, a new license or permit representing that part of the grazing privileges to which he may thereby become entitled shall be issued to him. In case of such transfer, the transferor shall not be entitled to a refund of any portion of the fees that have been properly paid and that are applicable to the period subsequent to the transfer.

A licensee or permittee will be required to make payment of fees in accordance with the terms of the license or permit unless he notifies the range manager in writing, more than thirty days before the effective date of any grazing period shown, that he desires to make temporary use of the grazing privileges in a manner other than that shown in the license or permit. Such change will be allowed if due to annual fluctuations ordinarily occurring in livestock operations or to the necessity of conserving or protecting the range. When the requested change is due to financial reasons, such as foreclosure, or other reasons beyond the licensee's or permittee's control, it may be granted for one year or longer, after reference to the advisory board for recommendation, and the approval of the range manager. Fee notices in each case will issue accordingly.

Upon application by a licensee or permittee, and after reference to the advisory board for recommendation, the range manager may allow an extension of the applicant's period or periods of use of the Federal range during any year or season thereof. A receipted supplemental fee notice covering the additional grazing privileges will constitute authority to use the range for the extended period.

(e) Refunds. No refund of fees properly paid will be made because of a failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(1) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Secretary of the Interior will in his discretion remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period as long as the emergency exists.

(2) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be made under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U.S.C. 95, et seq.).

(3) When a license or permit is suspended under section 501 (2) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1187; 50 U.S.C. 561 (2)), any fees that have been paid for the period of suspension will be refunded and any fees that are or that may become due for such period will be remitted. (Secs. 3, 5, 6, 48 Stat. 1270—1272; 43 U.S.C. 315b, 315d, 315e)(Secs. 501, 507, 54 Stat. 1187, 1188; 50 U.S.C. 561 (2), 567)

161.9 Procedure in applications, hearings and appeals.

(a) Filing and consideration of applications; recommendations; service of notice. Each year the regional administrator will set a date for each district in his region prior to which all applications for grazing licenses or permits in the district must be filed. Failure to file applications before such date will result in their rejection for that year unless reasonable justification for a belated filing is shown. Whenever an application is filed for a license or permit based in whole or in part on a property which has not served as a base for a license or permit during the grazing season immediately preceding such filing, all users who might be directly affected by favorable action on such application will be notified of its filing. All applications for grazing licenses or permits, except those of district advisers, will be considered first by the advisory board of the district in which the license or permit is sought. The advisory board will make its recommendation to the range manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable, the range manager will so notify the applicant by ordinary mail. If the recommendation is to any extent adverse, notice thereof will be served on the applicant personally either by the range manager or by such person as may have been designated by him, or by registered letter sent to the applicant at the address given in his application. Such notice will set out the reason or reasons set forth by the advisory board for the adverse recommendation and will name a place and date, not less than ten days thereafter, when protests against the recommendation will be heard: Provided, however, That in any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may, in its discretion, decide that a protest meeting be not held; whereupon, the range manager shall act upon the recommendation of the board as its final recommendation.

(b) Hearing of protests; reconsideration by advisory board; service of notice. At the dates and places fixed for hearing protests any party in interest may appear, either in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the range manager. If such recommendation is favorable to the applicant, and the range manager approves, he will notify the applicant thereof by ordinary mail. If the recommendation is to any extent adverse, and the range manager approves, a notice giving the reason or reasons therefor will be served on the applicant either personally by the range manager or such person as may have been designated by him, or by registered letter sent to the applicant at the address given in his application. Such notices will constitute the range manager's final decisions for purposes of appeal.

(c) Allowance or rejection of application by the range manager; modification; service of notice; appeal to examiner; intervention. The range manager is vested with the authority in the light of all facts and circumstances, after first having submitted an application to the district advisory board, to issue or to refuse to issue a grazing license or permit. If the action taken by the range manager on any application is substantially different from that recommended by the advisory board, a notice including a recital of the specific reasons for the action taken will be served on the applicant and on any other applicant or applicants adversely affected by such action, either personally by the range manager or by such person as may have been designated by him or by registered letter sent to the applicant at the address given in his application. The notice given the particular applicant will advise him of his privilege to file an appeal to an examiner. The appeal must be filed with the regional administrator within fifteen days following the receipt of the notice. The appeal shall be accompanied by specifications of error setting forth in a clear and concise manner the matters upon which it is based. Any party or parties who may be directly affected by the decision on the appeal will be notified by the regional administrator of the filing of the appeal and advised that a written request to intervene in the appeal may be filed. Such a party shall be known and designated as an intervener. When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

The range manager, or any intervener may, within twenty days after receipt of notification that an appeal has been filed, file with the regional administrator, after having served a copy on the appellant, a written motion that the appeal be dismissed for the reason that all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The regional administrator shall advise all other parties in interest that such a motion has been filed.

The appellant, or any other party in interest, may file a written answer within twenty days after service of motion upon him. The regional administrator shall transmit the motion, the proofs of service, and the answers to the examiner who shall rule on the motion, and, if the motion is sustained, dismiss the appeal without prejudice to the appellant's privilege to appeal to the Director, pursuant to paragraph (j) of section 161.9.

(d) Cancellation of licenses or permits; service of appeal to examiner. Licenses or permits will be subject to cancellation to the extent that they have been improperly issued. In any case in which it shall appear to the Bureau of Land Management that a license or permit confers grazing privileges in excess of those properly allowable under the act and the Federal Range Code for Grazing Districts, the range manager will notify the licensee or permittee that the license or permit is thereby held for cancellation either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such cancellation should not be made final. Such notice will set forth fully the reasons for the proposed cancellation and will be served on the licensee or permittee either personally by the range manager or by such person as may have been designated by him or by registered mail sent to the licensee or permittee at his last address of record. In case of failure of the licensee or permittee to show cause within the fifteen days allowed, the license or permit will be canceled to the extent indicated in the notice. The range manager will consider any cause shown and, if satisfied of its sufficiency, will close the case. If the range manager is not satisfied that sufficient causes have been shown, he will notify the licensee or permittee that the cancellation will be made final unless an appeal to an examiner of the Bureau of Land Management is filed within fifteen days from receipt of notice. Such notice will be served on the licensee or permittee either personally by the range manager of by such person as may have been designated by him or by registered mail sent to the licensee or permittee at his last address of record. The appeal must be filed with the regional administrator and shall be accompanied by specifications of error setting forth in a clear and concise manner the matters upon which it is based. So far as practicable, the appeal thereafter will follow the procedure prescribed in the following paragraphs of this section, except that any decision by the range manager or the examiner on a matter arising under this paragraph will not become effective pending the disposition of a timely appeal to the examiner, the Director or the Secretary of the Interior, as the case may be.

(e) Fixing of place and date for hearing before examiner on appeal; notice. Upon the filing of an appeal and specifications of error, the regional administrator will notify the Chief Examiner, naming a place within or near the district at which a hearing will be held. The Chief Examiner will then advise the regional administrator of the date of hearing, which will be not less than ten days after the date of the filing of the appeal, and the regional administrator thereupon will notify the appellant, and all parties who may be directly affected by the decision on the appeal, of the time and place of hearing, which shall be held by an examiner designated by the Director of the Bureau of Land Management.

(f) Authority of examiner. The examiner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses, to administer oaths, to call and question witnesses, and to make findings of fact, conclusions of law, and a decision. The examiner also shall have authority to take or to cause depositions to be taken whenever the ends of justice would be served thereby, in accordance with the procedure for taking depositions set out in the Rules of Practice (43 CFR Part 221). The examiner may stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges, and the same parties or their predecessors in interest. The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted because of the absence of witnesses only in accordance with the Rules of Practice (43 CFR Part 221). In other cases continuances may be granted only when the ends of justice will be served thereby.

Continuances will not be granted unless it appears that they are clearly justified and that a timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the other parties. The other parties shall have five days to file an objection to the continuance if they so desire. The examiner will then rule on the request, and, if the request is granted, set a new date for the hearing.

(g) Conduct of hearing before examiner. The appellant, the range manager, and recognized interveners will stipulate as far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented and issues which clearly appear to be unnecessary to a proper disposition of the case will be excluded; Provided, That the party asserting such an issue may state briefly for the record the substance of the proof which otherwise would be offered in support of the issue. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties. The range manager, or his representative, will then state the grounds of the decision from which the appeal has been taken, together with such explanation as may be deemed necessary, and may call and examine witnesses on the issues involved. Upon the conclusion of this testimony the appellant shall present his case, following which recognized interveners may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy. All oral testimony shall be under oath, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. Objections to evidence will be ruled upon by the examiner and exceptions duly noted, and such exceptions will be considered upon an appeal from the decision of the examiner. In noting an exception to a ruling sustaining an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence. The examiner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof.

(h) Witness fees. Under the subpoena issued a witness will be entitled to a witness fee of $1.50 per day for the time in attendance at the hearing and the time necessarily spent in travel from his residence to the place of hearing and return, plus five cents per mile for the distance necessarily traveled. Witnesses who attend hearings so far removed from their residences as to prohibit return thereto from day to day will be allowed a per diem of $3.00 for expenses of subsistence in addition to witness fees for each day of actual attendance and for each day necessarily occupied in traveling to and from hearings. A subpoena may be served only in the county in which the hearing is to be held, and a witness cannot be compelled to appear outside of such county. Claims for witness fees and mileage will be presented on Form No. 1-327, properly certified by an authorized certifying officer, and will be submitted in the usual way for payment.

(i) Findings of fact and decision by examiner; notice; submission to Director of the Bureau of Land Management. As promptly as possible following the termination of the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law and will render a decision upon all material issues of fact, law and discretion presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. In any case, he must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any appeal. A copy thereof shall be sent by registered mail to the appellant and all interveners: Provided, however, that the Director of the Bureau of Land Management may require, in specific cases, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by the Rules of Practice (43 CFR Part 221).

(j) Notice of appeal to the Director of the Bureau of Land Management; furnishing copies of the record. Within ten days after the receipt of the decision of the examiner any party desiring to appeal to the Director of the Bureau of Land Management shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the appellant and to the interveners, at a charge of five cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervener is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed in the office of the Director.

(k) Effect of decision suspended pending appeal. An appeal shall suspend the effect of the decision appealed from pending the decision on appeal. However (1) the officer making a decision, either initially or on appeal, may, in his discretion when the orderly administration of the range or other public interest requires, provide, in the decision or by order made before an appeal is taken therefrom, that the decision shall be in full force and effect pending the decision on appeal, and (2) the officer to whom an appeal is taken may, in his discretion when the orderly administration of the range or other public interest requires, by order provide that the decision appealed from shall be in full force and effect pending the decision on appeal. Any action taken by the range manager pursuant to a decision shall be subject to modification or revocation by the Director or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under sec. 10(c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

(l) Appeals to the Director of the Bureau of Land Management. An appeal from the decision of the examiner to the Director of the Bureau of Land Management shall be filed, together with any brief desired in support thereof, within thirty days after date of receipt of the transcript of testimony, or, in the event the transcript of testimony is not requested, such appeal shall be filed within thirty days after receipt of the examiner's decision, in the office of the Director. A copy of the appeal and any brief in support thereof must be served on each party of record, either personally or by registered mail. Any party of record opposing the appeal will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in said office a reply brief, if he so desires, a copy of which must be served upon the appellant in the same manner. Evidence of service of appeals and briefs must be furnished. The appeal in other respects shall be made in accordance with the Rules of Practice (43 CFR Part 221).

No adjudication of grazing privileges will be set aside on appeal if it appears that it is reasonable and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts.

(m) Appeals to the Secretary of the Interior. An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with the Rules of Practice (43 CFR Part 221).

(n) Record as basis of decisions: definition of record. No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence.

The transcript of testimony and exhibits together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

161.10 General Rules of the Range.

(a) Acts Prohibited. The following acts are prohibited on the Federal range:

(1) Grazing livestock upon or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit; whether regular or free-use, or a crossing permit.

(2) Grazing livestock upon or driving livestock across the Federal range, including stock driveways, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(3) Allowing livestock to drift and to graze on Federal range, including stock driveways, without a license or permit, either regular or free-use.

(4) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(5) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(6) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law, Provided, That permits to carry on controlled burning of vegetative cover or brush may be issued by the Bureau of Land Management in proper cases, such permits to be subject to such conditions as the Bureau of Land Management may see fit to impose, and to all State laws and regulations concerning such burning.

(7) Maliciously molesting, or driving from the Federal range livestock lawfully grazing thereon under an appropriate license or permit.

(b) Rules of fair range practice. The following rules of fair range practice shall be complied with by all licensees and permittees, both regular and free-use:

(1) The provisions of statutory law of any State in which grazing districts are located with reference to the branding of livestock and sanitary requirements are hereby incorporated as a part of the Federal Range Code for Grazing Districts and all licensees and permittees shall comply with the provisions in effect in the State or States in which any part of the grazing district or districts in which their licenses or permits are to be effective are located.

(2) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats, and ten miles per day for cattle or horses, Provided, That an increased or decreased rate of travel may be prescribed in such permit if, in the discretion of the range manager, the circumstances in any given case so require.

(3) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, shall pay a proportionate share of the cost of managing livestock licensed or permitted within the range area in instances wherein associations for such management have been formed, and shall bed sheep and goats according to instructions issued by the Bureau of Land Management. Upon request by the majority of the users of any community allotment of Federal range, the Bureau of Land Management may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements by the Bureau of Land Management, the provisions of State law on the subject shall be regarded as applicable. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.11 Procedure for enforcement of rules and regulations.

(a) Service of notice. Whenever it appears that there has been any willful violation of any provision of the act or of the Federal Range Code for Grazing Districts, the range manager will cause the alleged violator and any interested lien holder who has filed notice of his lien with the Bureau of Land Management to be served with a written notice, which will set forth the act or acts constituting such violation and in which reference will be made to the provision or provisions of the act or the Federal Range Code for Grazing Districts alleged to have been violated. Such notice may be served in person or by registered mail and the affidavit of the person making personal service or the registry receipt shall be preserved.

(b) Unlawful grazing on Federal range; removal of livestock; impoundment. Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice of his lien with the Bureau of Land Management will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(c) Amicable settlement of civil cases involving damage to Government property. All offers of settlement for damage to Federal range or to other property of the United States resulting from an alleged violation of any provision of the act or of the Federal Range Code for Grazing Districts will be transmitted by the regional administrator, with his recommendation, to the Director of the Bureau of Land Management for consideration. An offer of settlement will not constitute satisfaction of civil liability for the damage involved until finally accepted by him, and in no event will it relieve the violator of criminal liability. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered and until payment of any amount due as grazing fees has been made.

(d) Disciplinary action for violations. The regional administrator is authorized to reduce or revoke a grazing license or permit or to deny renewal thereof for a clearly established violation of the terms or conditions of the license or permit or for a violation of any of the provisions of the Federal Range Code for Grazing Districts. Before any license or permit is reduced or revoked, or renewal thereof denied, because of such a violation, however, the regional administrator will cause the licensee or permittee to be served with a written notice which will set forth the act or acts constituting the violation and an estimate of the amount of damage resulting therefrom. Such notice also will refer to the terms or conditions of the license or permit or to the provision or provisions of the Federal Range Code for Grazing Districts alleged to have been violated. The notice will cite the licensee or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license or permit should not be reduced or revoked and satisfaction of damages made. The notice may be served in person or by registered mail and the affidavit of the person making personal service or the registry receipt shall be preserved.

The hearing before the examiner upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The licensee or permittee may appear in his own behalf or by counsel. The evidence shall be confined to the commission of the acts charged and the amount of damages, if any, due the United States. If upon the hearing of the order to show cause the violation with which the licensee or permittee is charged is established to the satisfaction of the examiner, he will render a decision finding the amount of damages and directing the regional administrator to reduce or revoke the license or the permit, if the facts so warrant.

Upon the failure of the person served in the notice to appear at the time and place designated in the notice, and in the absence of a good and sufficient showing to the examiner of a reason for his failure to appear, the examiner may direct the regional administrator to reduce or revoke the license or permit, as the violations charged in the notice and the amount of damages alleged may warrant.

Appeal from the decision of the examiner on any matter under this section shall be made in accordance with the provisions of paragraphs (j), (k), and (l) of section 161.9, and appeal to the Secretary of the Interior from the decision of the Director shall be made under paragraph (m) of section 161.9.

(e) Bonds for violations. Whenever a livestock operator commits a willful or wanton violation of any provision of these rules or has repeatedly committed violations, the regional administrator is authorized to require him to furnish a bond in an amount sufficient to cover all probably damage that may result from his violations during the ensuing year. The bond may be either a cash or a surety bond and will be in a form approved by the Director of the Bureau of Land Management. Upon the failure to furnish such bond when so required, the regional administrator is authorized to refuse to issue or renew a license or permit, or to revoke an existing license or permit. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.12 District Advisory Boards.

(a) Authorization for Establishment; Number of Members; Qualifications. Section 18 of the act provides that there shall be an advisory board of local stockmen in each grazing district. The regional administrator will fix the number of members to be elected to such board in each district, such number to be not less than five and not more than twelve, exclusive of a wildlife representative who will not be elective but will be appointed by the Secretary of the Interior. The regional administrator may fix the number of district advisers to be elected as representatives of each class of stockmen, according to the kind of livestock owned, or may fix the number to be elected from each voting precinct established by him, or both, provided that the free-use licensees or permittees in each district will be entitled to one representative, who shall be a free-use licensee or permittee. All district advisers shall be elected in the manner provided in this section and, excepting the wildlife representatives, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

(b) Elections; Time and Place of Holding; Notice. An election of district advisers for each grazing district will be held within ninety days after the publication in the Federal Register of the order establishing the district, and annually thereafter. The region administrator may divide the district into voting precincts and will designate a voting place within or near each district or precinct. The range manager will give notice of the time and place or places of holding an election in one or more newspapers of general circulation in the district, by posting in the office of the regional administrator and in the office of the range manager and by posting in such other public places as may be necessary to give the matter proper publicity. No election shall be held to be invalid by reason of failure to give any of the foregoing notices unless it shall be made to appear that there was a failure to give substantial notice.

(c) Elections; Qualifications of Electors. Only those persons who are qualified to receive regular or free-use licenses or permits will be allowed to vote in any election held pursuant to section 18 of the act, Provided, That in any new grazing district hereinafter established and embracing areas not heretofore within any district, the electors will be those stockmen who, prior to the establishment of the district, were regularly accustomed to using the Federal range within said district. A minor may vote if otherwise qualified, Provided, That upon request by his natural or legal guardian his ballot may be cast by the guardian in the name of the minor. The judges at any election will be furnished by the representative of the Bureau of Land Management in charge with a list of all electors entitled to vote in the district. No one whose name does not appear on such list shall be allowed to vote, Provided, That anyone claiming that his name has been erroneously omitted from the list may obtain and mark a ballot which will be held uncounted until the range manager shall have had a further opportunity to determine whether or not the party was entitled to vote. If it is found that the party was entitled to vote, his ballot shall be counted, otherwise it shall be disregarded.

(d) Elections; judges; nominations; ballots; registration; challenges. The representative of the Bureau of Land Management in charge of an election will choose three qualified electors to act as election judges. The electors present may then place in nomination the names of the candidates, Provided, That nominations for the representative of a given precinct must be made by one qualified to represent such precinct, but ballots may be cast for any other person qualified to represent a particular class or precinct. Voting shall be only by ballots cast personally by qualified electors and proxies will not be recognized. No elector shall receive a ballot until he has registered by signing opposite his name on the list of persons entitled to vote. Before receiving a ballot any elector may be challenged by any other elector qualified to vote in the district and thereupon the judges, or any of them, may require the elector challenged to answer such questions concerning his qualifications as a voter as may be deemed necessary. Upon his failure or refusal to answer such questions satisfactorily, he shall not be permitted to register or to receive a ballot. Each candidate may designate any qualified elector to remain within the polling places during the casting and counting of votes and the declaration of the results thereof, and such person may act as a challenger. Before any elector shall be permitted to deposit his completed ballot in the ballot box, the judges shall write "Voted" opposite his signature on the registration list.

(e) Elections; method of voting. Only one ballot may be cast by the holder or holders of any one license or permit, whether regular or free-use, or by a qualified elector or electors controlling any one base property. An elector eligible only for a free-use license or permit may cast a ballot for one free-use candidate only and for no other candidate. All other electors, regardless of the precincts in which they may reside or operate, shall cast one ballot each, on which shall be written the name or names of the total number of candidates to be elected in the district as representatives of the class of owners of livestock to which the elector belongs, Provided, That if he belongs to more than one such class he shall vote only for the candidates of the class in which he predominates in numbers of livestock, on the basis of one cow or horse being the equivalent of five sheep or goats. If a certain number are to be elected from each precinct, no ballot shall include the names of more candidates from any one precinct than are to be elected therefrom.

(f) Elections; close of polls; results; ties; judges' certificate. Polling places shall remain open on the day of the election from 2 p.m. to 5 p.m., or until those present at 5 p.m. shall have voted. Upon the closing of the polls the judges shall open the ballot box and count the votes. In case of a tie vote, a choice by lot shall be made by the judges in the presence of the tie candidates or of at least one representative designated by each such candidate for such purpose. As soon as the ballots have been counted, the judges shall make out a certificate of returns under their hands, stating the number of votes cast, the number of excess, unused or spoiled ballots, and, in both words and figures, the number of votes received by each candidate. The certificate, together with the ballots and the registration list of voters, shall be enclosed and sealed and forthwith delivered to the representative of the Bureau of Land Management in charge of the election.

(g) Appointment by Secretary of the Interior; Oath and Term of Office; Removal; Vacancies. No person elected as a district adviser may assume office until he has been appointed by the Secretary of the Interior and has taken an oath of office. Persons elected as district advisers at the first election after the establishment of a grazing district shall be divided as evenly as may be into three classes by lot by the range manager. Those in class 1 shall hold office for one year, those in class 2 for two years, and those in class 3 for three years, and until their successors are elected and have qualified. Thereafter at each election the class whose term has expired shall be elected for a term of three years. The Secretary of the Interior may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or for the good of the service. Upon a vacancy occurring in the office of a district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the regional administrator, shall be transmitted to the Director, who shall consider the recommendation and, if he concurs, transmit it to the Secretary for his consideration. A person appointed by the Secretary to fill a vacancy shall hold office until the next regular election, when a successor shall be elected to serve for the remainder of the unexpired term, if any, of the member causing the vacancy. Wildlife representatives shall hold office for a term of three years and until a successor is appointed by the Secretary.

(h) Meetings; Organization. District advisory boards shall meet at any time and place within or near the district designated by the regional administrator or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the representative of the Bureau of Land Management present, it may meet in executive session in considering applications for the granting of licenses or permits or any other business.

(i) Functions and duties of district advisers. District advisers shall advise or make recommendations on the following matters:

(1) The carrying capacity of the Federal range in the district.

(2) Applications under the Federal Range Code for Grazing Districts, for grazing licenses or permits, either regular or free-use, Provided, That no board shall make a recommendation on an application by any of its members. Such an application shall be acted on in the first instance by the range manager.

(3) Proper rules of fair range practice.

(4) Allotments of range by classes of livestock or for community or individual use.

(5) Seasonal use of the Federal range or any part thereof.

(6) Applications for the construction or maintenance of improvements on the Federal range under section 4 of the act.

(7) Any recommendations made by local associations of stockmen in the district.

(8) Reservations of carrying capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(9) Special rules for the district, within the meaning of 161.15.

(10) Any other matter which they may desire to bring to the attention of the Secretary of the Interior, or on which he may request their advice. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)(July 14, 1939, 53 Stat. 1002; 43 U.S.C. 315o-1)

(j) State Advisory Boards. Each grazing district advisory board shall select from its members, at the first meeting of the board after an election, two members and two alternates to serve on a State Advisory Board for the State in which the district is located, Provided, That where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected.

(k) National Advisory Board Council. Each State Advisory Board shall select from its members, at its first meeting after its membership is designated or changed, one representative and one alternate representing cattle and horses, and one representative and one alternate representing sheep and goats, to serve on a National Advisory Board Council.

(l) Functions and duties of State Advisory Boards and National Advisory Board Council. In addition to the service rendered on grazing district advisory boards, the State Advisory Board members shall consider and make recommendations on grazing administration policies or problems affecting the State as a whole. The National Advisory Board councilmen, in addition to serving on their respective district and State Advisory Boards, shall consider and make recommendations on grazing administration policies and problems of national scope (48 Stat. 1269; 49 Stat. 1976, 43 U.S.C. 315 et seq.).

161.13 Local associations of stockmen.

(a) Organization. Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

(b) Articles of incorporation; constitutions; by-laws. Such associations shall be organized as corporations "not-for-profit," if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the Director of the Bureau of Land Management before the organization of the association shall be recognized by the Department of the Interior. The by-laws of such associations need not be submitted but in any instance in which they are in conflict with the provisions of the Federal Range Code for Grazing Districts or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

(c) Powers. Such local associations should be authorized to exercise the following powers:

(1) To lease, or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

(2) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(3) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district, under permit issued by authority of the Secretary of the Interior.

(4) To act in an advisory capacity to the Secretary of the Interior in the administration of the Federal range lying within the district. All recommendations made by the association to the Secretary shall be subject to the provisions of the Federal Range Code for Grazing Districts and shall include the right of a hearing before an examiner of the Bureau of Land Management on the necessity and propriety of any action recommended and of appeal to the Secretary from the examiner's findings of fact and decision.

(5) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes contemplated by the act.

(6) To enter into cooperative agreement with the Secretary of the Interior or any officer designated by him for any of the foregoing purposes or for any other purpose authorized by the act.

(d) Cooperative agreements for use of lands; obligation of all licensees and permittees to share cost. Whenever the carrying capacity of Federal range is increased by reason of the acquisition of control of any lands by the Bureau of Land Management through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands, based on the number of livestock by which his license or permit is increased by reason of the administration of the association lands by the Bureau of Land Management, plus any authorized association assessments for other expenses. The range manager is authorized to refuse to issue a license or permit to any applicant or to cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such an agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges. (Sec. 9, 48 Stat. 1273; 43 U.S.C. 315h)

161.14 Construction and maintenance of improvements on the Federal Range.

(a) Statutory authorization. Section 4 of the act provides:

> "Fences, wells, reservoirs, and other improvements necessary to the care and management of the permitted livestock may be constructed on the public lands within such grazing districts under permit issued by the authority of the Secretary, or under such cooperative arrangement as the Secretary may approve. Permittees shall be required by the Secretary of the Interior to comply with the provisions of law of the State within which the grazing district is located with respect to the cost and maintenance of partition fences. No permit shall be issued which shall entitle the permittee to the use of such improvements constructed and owned by a prior occupant until the applicant has paid to such prior occupant the reasonable value of such improvements to be determined under rules and regulations of the Secretary of the Interior. The decision of the Secretary in such cases is to be final and conclusive."

(b) Applicants for permits and cooperative agreements; qualifications. An applicant for a permit or for a cooperative agreement or an arrangement to construct and maintain improvements of the character described in section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must satisfy the qualifications defined in 161.3(a).

(c) Applications; form and contents; filing. Applications for such permits, cooperative agreements, or arrangements shall set forth the location of such improvements by legal subdivision of the public land survey, the necessity, use, cost, and description of such improvements, item by item, shall designate the time and manner of their construction, the period of use, the method of operation, protection, repair, removal, or other disposition, and shall include any other pertinent information. If an application concerns the use and maintenance of improvements constructed and owned by a prior occupant under permit issued by the authority of the Secretary, it shall include also an itemized showing of their reasonable value at the time of filing the application and other evidence that the applicant has paid this amount to the prior occupant and has obtained title to the improvements free of all encumbrances, or a clear and concise explanation of the reasons for a lack of such agreement between the applicant and the prior occupant. When necessary properly to explain the improvements and matters connected therewith, the application shall be accompanied by a sketch of the improvements with specifications and a map showing their location in the grazing district. All applications shall be made on forms provided by the Bureau of Land Management, with such modifications as may be necessary, and shall be filed in triplicate with the range manager, who will submit them to the advisory board for consideration and recommendation prior to transmittal to the regional administrator for action.

(d) Applications for construction of improvements; consideration; appeals. The regional administrator, following the receipt of an application concerning the construction of an improvement, together with the recommendation of the advisory board and range manager, will act on the application and such action shall be final unless the applicant appeals to an examiner. Appeals to an examiner and to the Director of the Bureau of Land Management and Secretary of the Interior shall be made in accordance with section 161.9(c) and sections 161.9(e) through 161.9(n). Decisions not appealed from, and, in any event, the decision of the Secretary shall be final.

(e) Applications for use of improvements owned by prior occupant; procedure upon failure to agree. An application to use and maintain improvements constructed and owned by a prior occupant, under permit issued by the authority of the Secretary, if accompanied by the by the evidence of ownership provided for in paragraph (c) of this section, shall be considered in the same manner as an application for the construction of improvements. Upon the filing of such an application showing that the applicant and the prior occupant have not agreed on the value of the improvements, the regional administrator will immediately, at the applicant's expense, cause the prior occupant to be served either personally or by registered mail with a notice of the filing of the application, together with copies of the application and any accompanying papers and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or, if the prior occupant applies within thirty days from the date of service for a hearing, in the light of such evidence as the applicant and the prior occupant may desire to present in such hearing, the regional administrator will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken to an examiner. Appeals to an examiner and to the Director of the Bureau of Land Management and to the Secretary of the Interior shall be made in accordance with section 161.9(c) and (e) through (n). Decisions not appealed from and, in any event, the decision of the Secretary shall be final. Upon the failure of the prior occupant to show cause or to apply within thirty days for a hearing, the reasonable value of the improvements will be determined by the regional administrator: Provided, That in the event of such default by the prior occupant the value determined shall not be less than the amount alleged by the applicant in his application and the decision of the regional administrator in such cases shall be final. In any case when a decision has become final, payment by the applicant to the prior occupant of the amount determined and a showing that the improvements are free of all encumbrances shall be a condition precedent to favorable action on the application.

(f) Approval of application. Upon the approval of an application concerning the construction or use and maintenance of any improvements on the Federal range by the issuance of a permit or the approval of a cooperative agreement or other arrangement, the applicant may construct the improvements or use the improvements constructed and owned by the prior occupant, as the case may be. (Sec. 4, 48 Stat. 1271; 43 U.S.C. 315c)

161.15 Special rules for grazing districts. Whenever it appears to a regional administrator that local conditions in any district in his region make necessary the application of a special rule on any of the matters in the Federal Range Code for Grazing Districts in order better to achieve an administration consistent with the purposes of the act, he may recommend such a rule, supported by a factual showing of its necessity, to the Secretary of the Interior for approval. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

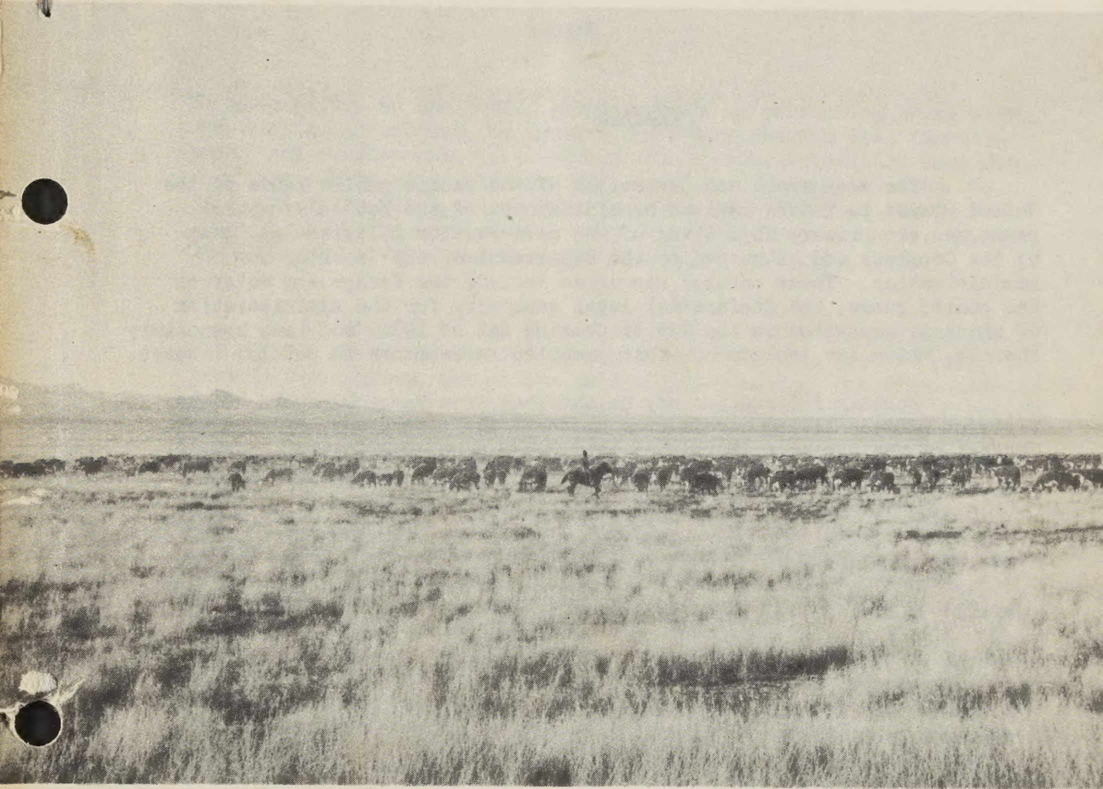
161.16 Penal provision. Under section 2 of the act any willful violation of the provisions of the act or of the rules and regulations thereunder (the Federal Range Code for Grazing Districts), after actual notice of the existence of the provisions of such act or such rules and regulations, is punishable by a fine of not more than $500. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.17 Saving clause. So far as practicable, and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in 161.1(a) of the Federal Range Code for Grazing Districts, the provisions of 161.6(b) of the Code will not be applied to the prejudice of the position of anyone who on September 23, 1942, was the holder of a grazing license or permit or who on that date had pending an application therefor. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

UNITED STATES

DEPARTMENT OF THE INTERIOR
J. A. KRUG, Secretary

BUREAU OF LAND MANAGEMENT
MARION CLAWSON, Director



THE TAYLOR GRAZING ACT OF JUNE 28, 1934

WITH AMENDMENTS TO OCTOBER 1, 1949

A CENTURY OF CONSERVATION

1849 1949

March 3, 1849

OCTOBER 1949

WASHINGTON 25, D. C.

PREFACE

The management and protection of the vacant public lands of the United States to insure maximum beneficial use of the Nation's natural resources are primary objectives of the conservation policies laid down by the Congress and entrusted to the Department of the Interior for administration. These natural resources include the forage and water on the public range, the fundamental legal authority for the administration of which is contained in the Taylor Grazing Act of 1934, and laws amendatory thereto, which are included in this pamphlet in response to popular request.

Further information may be obtained from Range Managers at the District Offices listed herein, the Regional Administrators, or upon request of the Director, Bureau of Land Management, Washington, 25, D. C.

Marion Clawson

Director

THE TAYLOR GRAZING ACT

As Amended

AN ACT

To stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range, and for other purposes. Approved June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976), July 14, 1939 (53 Stat. 1002), July 30, 1947 (61 Stat. 630), August 6, 1947 (61 Stat. 790), and June 19, 1948 (62 Stat. 533).

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That in order to promote the highest use of the public lands pending its final disposal, the Secretary of the Interior is authorized, in his discretion, by order to establish grazing districts or additions thereto and/or to modify the boundaries thereof, not exceeding in the aggregate an area of one hundred and forty-two million acres of vacant, unappropriated, and unreserved lands from any part of the public domain of the United States (exclusive of Alaska), which are not in national forests, national parks and monuments, Indian reservations, revested Oregon and California Railroad grant lands, or revested Coos Bay Wagon Road grant lands, and which in his opinion are chiefly valuable for grazing and raising forage crops: PROVIDED, That no lands withdrawn or reserved for any other purpose shall be included in any such district except with the approval of the head of the department having jurisdiction thereof. Nothing in this Act shall be construed in any way to diminish, restrict, or impair any right which has been heretofore or may be hereafter initiated under existing law validly affecting the public lands, and which is maintained pursuant to such law except as otherwise expressly provided in this Act, nor to affect any land heretofore or hereafter surveyed which, except for the provisions of this Act, would be a part of any grant to any State, nor as limiting or restricting the power or authority of any State as to matters within its jurisdiction. Whenever any grazing district is established pursuant to this Act, the Secretary shall grant to owners of land adjacent to such district, upon application of any such owner, such rights-of-way over the lands included in such district for stock-driving purposes as may be necessary for the convenient access by any such owner to marketing facilities or to lands not within such district owned by such person or upon which such person has stock-grazing rights. Neither this Act nor the Act of December 29, 1916 (39 Stat. 862; U.S.C., title 43, secs. 291 and following), commonly known as the

"Stock Raising Homestead Act," shall be construed as limiting the authority or policy of Congress or the President to include in national forests public lands of the character described in section 24 of the Act of March 3, 1891 (26 Stat. 1103; U.S.C., title 16, sec. 471), as amended, for the purposes set forth in the Act of June 4, 1897 (30 Stat. 35; U.S.C., title 16, sec. 475), or such other purposes as Congress may specify. Before grazing districts are created in any State as herein provided, a hearing shall be held in the State, after public notice thereof shall have been given, at such location convenient for the attendance of State officials, and the settlers, residents, and livestock owners of the vicinity, as may be determined by the Secretary of the Interior. No such district shall be established until the expiration of ninety days after such notice shall have been given, nor until twenty days after such hearing shall be held: PROVIDED, HOWEVER, That the publication of such notice shall have the effect of withdrawing all public lands within the exterior boundary of such proposed grazing districts from all forms of entry of settlement. Nothing in this Act shall be construed as in any way altering or restricting the right to hunt or fish within a grazing district in accordance with the laws of the United States or of any State, or as vesting in any permittee any right whatsoever to interfere with hunting or fishing within a grazing district. (43 U.S.C., sec. 315)

SEC. 2. The Secretary of the Interior shall make provision for the protection, administration, regulation, and improvement of such grazing districts as may be created under the authority of the foregoing section, and he shall make such rules and regulations and establish such service, enter into such cooperative agreements, and do any and all things necessary to accomplish the purposes of this Act and to insure the objects of such grazing districts, namely, to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range; and the Secretary of the Interior is authorized to continue the study of erosion and flood control and to perform such work as may be necessary amply to protect and rehabilitate the areas subject to the provisions of this Act, through such funds as may be made available for that purpose, and any willful violation of the provisions of this Act or of such rules and regulations thereunder after actual notice thereof shall be punishable by a fine of not more than $500. (43 U.S.C., sec. 315a)

SEC. 3. That the Secretary of the Interior is hereby authorized to issue or cause to be issued permits to graze livestock on such grazing districts to such bona fide settlers, residents, and other stock owners as under his rules and regulations are entitled to participate in the use of the range, upon the payment annually of reasonable fees in each case to be fixed or determined from time to time, and in fixing the amount of such fees the Secretary of the Interior shall take into account the extent to which such districts yield public benefits over and above those accruing to the users of the forage resources for livestock purposes. Such fees shall consist of a grazing fee for the use of the range, and a range-improvement fee which, when appropriated by the Congress, shall be available until expended solely for the construction, purchase, or maintenance of range improvements. Grazing permits shall be issued only to citizens of the United States or to those who have filed the necessary declarations of intention to become such, as required by the naturalization laws, and to groups, associations, or corporations authorized to conduct business under the laws of the State in which the grazing district is located. Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them, except that until July 1, 1935, no preference shall be given in the issuance of such permits to any such owner, occupant, or settler, whose rights were acquired between January 1, 1934, and December 31, 1934, both dates inclusive, except that no permittee complying with the rules and regulations laid down by the Secretary of the Interior shall be denied the renewal of such permit, if such denial will impair the value of the grazing unit of the permittee, when such unit is pledged as security for any bona fide loan. Such permits shall be for a period of not more than ten years, subject to the preference right of the permittees to renewal in the discretion of the Secretary of the Interior, who shall specify from time to time numbers of stock and seasons of use. During periods of range depletion due to severe drought or other natural causes, or in case of a general epidemic of disease, during the life of the permit, the Secretary of the Interior is hereby authorized, in his discretion to remit, reduce, refund in whole or in part, or authorize postponement of payment of grazing fees for such depletion period so long as the emergency exists: PROVIDED FURTHER, That nothing in this Act shall be construed or administered in any way to diminish or impair any right to the possession and use of water for mining, agriculture, manufacturing, or other purposes which has heretofore vested or accrued under existing law validly affecting the public lands or which may be hereafter initiated or acquired and maintained in accordance with such law. So far as consistent with the purposes and provisions of this Act, grazing privileges recognized and acknowledged shall be adequately safeguarded, but the creation of a grazing district or the issuance of a permit pursuant to the provisions of this Act shall not create any right, title, interest, or estate in or to the lands. (43 U.S.C., sec. 315b)

SEC. 4. Fences, wells, reservoirs, and other improvements necessary to the care and management of the permitted livestock may be constructed on the public lands within such grazing districts under permit issued by the authority of the Secretary, or under such cooperative arrangement as the Secretary may approve. Permittees shall be required by the Secretary of the Interior to comply with the provisions of law of the State within which the grazing district is located with respect to the cost and maintenance of partition fences. No permit shall be issued which shall entitle the permittee to the use of such improvements constructed and owned by a prior occupant until the applicant has paid to such prior occupant the reasonable value of such improvements to be determined under rules and regulations of the Secretary of the Interior. The decision of the Secretary in such cases is to be final and conclusive. (43 U.S.C., sec. 315c)

SEC. 5. That the Secretary of the Interior shall permit, under regulations to be prescribed by him, the free grazing within such districts of livestock kept for domestic purposes; and provided that so far as authorized by existing law or laws hereinafter enacted, nothing herein contained shall prevent the use of timber, stone, gravel, clay, coal, and other deposits by miners, prospectors for mineral, bona fide settlers and residents, for firewood, fencing, buildings, mining, prospecting, and domestic purposes within areas subject to the provisions of this Act. (43 U.S.C., sec. 315d)

SEC. 6. Nothing herein contained shall restrict the acquisition, granting, or use of permits or rights-of-way within grazing districts under existing law; or ingress or egress over the public lands in such districts for all proper and lawful purposes; and nothing herein contained shall restrict prospecting, locating, developing, mining, entering, leasing, or patenting the mineral resources of such districts under law applicable thereto. (43 U.S.C., sec. 315e)

SEC. 7. That the Secretary of the Interior is hereby authorized, in his discretion, to examine and classify any lands withdrawn or reserved by Executive order of November 26, 1934 (numbered 6910), and amendments thereto, and Executive order of February 5, 1935 (numbered 6964), or within a grazing district, which are more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants, or more valuable or suitable for any other use than for the use provided for under this Act, or proper for acquisition in satisfaction of any outstanding lieu, exchange or script rights or land grant, and to open such lands to entry, selection, or location for disposal in accordance with such classification under applicable public-land laws, except that homestead entries shall not be allowed for tracts exceeding three hundred and twenty acres in area. Such lands shall not be subject to disposition, settlement, or occupation until after the same have been classified and

opened to entry: PROVIDED, That locations and entries under the mining laws, including the Act of February 25, 1920, as amended, may be made upon such withdrawn and reserved areas without regard to classification and without restrictions or limitation by any provision of this Act. Where such lands are located within grazing districts reasonable notice shall be given by the Secretary of the Interior to any grazing permittee of such lands. The applicant, after his entry, selection, or location is allowed, shall be entitled to the possession and use of such lands: PROVIDED, That upon the application of any applicant qualified to make entry, selection, or location, under the public-land laws, filed in the land office of the proper district, the Secretary of the Interior shall cause any tract to be classified, and such application, if allowed by the Secretary of the Interior, shall entitle the applicant to a preference right to enter, select, or locate such lands if opened to entry as herein provided.
(43 U.S.C., sec. 315f)

SEC. 8. (a) That where such action will promote the purposes of the district or facilitate the administration of the public lands, the Secretary is authorized to accept on behalf of the United States any lands within or without the exterior boundaries of a grazing district as a gift.

(b) When public interest will be benefited thereby the Secretary is authorized to accept on behalf of the United States title to any privately owned lands within or without the boundaries of a grazing district, and in exchange therefor to issue a patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than fifty miles within the adjoining State nearest the base lands.

(c) Upon application of any State to exchange lands within or without the boundaries of a grazing district the Secretary of the Interior shall, and is hereby, directed to proceed with such exchange at the earliest practicable date and to cooperate fully with the State to that end, but no State shall be permitted to select lieu lands in another State. The Secretary of the Interior shall accept on behalf of the United States title to any State-owned lands within or without the boundaries of a grazing district, and in exchange therefor issue patent to survey grazing district land not otherwise reserved or appropriated or unappropriated and unreserved surveyed public land; and in making such exchange the Secretary is authorized to patent to such State, land either of equal value or of equal acreage: PROVIDED, That no State shall select public lands in a grazing district in furtherance of any exchange unless the lands offered by the State in such exchange lie within such grazing district and the selected lands lie in a reasonably compact body which is so located as not to interfere with the administration or value of the remaining land in such district for grazing purposes as set forth in this Act.

When an exchange is based on lands of equal acreage and the selected lands are mineral in character, the patent thereto shall contain a reservation of all minerals to the United States; and in making exchanges of equal acreage the Secretary of the Interior is authorized to accept title to offered lands which are mineral in character, with a mineral reservation to the State.

For the purpose of effecting exchanges based on lands of equal acreage the identification and area of unserveyed school sections may be determined by protraction or otherwise. The selection by the State of lands in lieu of any such protracted school sections shall be a waiver of all of its right to such sections.

(d) Before any such exchange under this section shall be effected, notice of the contemplated exchange, describing the lands involved, shall be published by the Secretary of the Interior once each week for four successive weeks in some newspaper of general circulation in the County or counties in which may be situated the lands to be accepted, and in the same manner in some like newspaper published in any county in which may be situated any lands to be given in such exchange; lands conveyed to the United States under this Act shall, upon acceptance of title, become public lands, and if located within the exterior boundaries of a grazing district they shall become a part of the district within the boundaries of which they are located: PROVIDED, That either party to an exchange based upon equal value under this section may make reservations of minerals, easements, or rights of use. Where reservations are made in lands conveyed either to or by the United States the right to enjoy them shall be subject to such reasonable conditions respecting ingress and egress and the use of the surface of the land as may be deemed necessary. Where mineral reservations are made by the grantor in lands conveyed by the United States, it shall be so stipulated in the patent, and any person who prospects for or acquires the right to mine and remove the reserved mineral deposits may enter and occupy so much of the surface as may be required for all purposes incident to the prospecting for, mining and removal of the minerals therefrom, and may mine and remove such minerals, upon payment to the owner of the surface for damages caused to the land and improvements thereon. No fee shall be charged for any exchange of land made under this Act except one-half of the cost of publishing notice of a proposed exchange as herein provided. (43 U.S.C., sec. 315g)

SEC. 9. The Secretary of the Interior shall provide, by suitable rules and regulations, for cooperation with local associations of stockmen, State land officials, and official State agencies engaged in conservation or propagation of wild life interested in the use of the grazing districts. The Secretary of the Interior shall provide by appropriate rules and regulations for local hearings on appeals from the decisions of the administrative officer in charge in a manner similar to the procedure in the land department. The Secretary of the Interior shall also be empowered to accept contributions toward the administration, protection, and improvement of lands within or without the exterior boundaries of a grazing district, moneys so received to be covered into the Treasury as a special fund, which is hereby appropriated and made available until expended, as the Secretary of the Interior may direct, for payment of expenses incident to said administration, protection, and improvement, and for refunds to depositors of amounts contributed by them in excess of their share of the cost. (43 U.S.C., sec. 315h)

SEC. 10. Except as provided in sections 9 and 11 hereof, all moneys received under the authority of this Act shall be deposited in the Treasury of the United States as miscellaneous receipts, but the following proportions of the moneys so received shall be distributed as follows: (a) 12-1/2 per centum of the moneys collected as grazing fees under section 3 of this Act during any fiscal year shall be paid at the end thereof by the Secretary of the Treasury to the State in which the grazing districts producing such moneys are situated, to be expended as the State legislature of such State may prescribe for the benefit of the county or counties in which the grazing districts producing such moneys are situated: PROVIDED, That if any grazing district is in more than one State or county, the distributive share to each from the proceeds of said district shall be proportional to its area in said district; (b) 25 per centum of all moneys collected under section 15 of this Act during any fiscal year when appropriated by the Congress, shall be available until expended solely for the construction, purchase, or maintenance of range improvements; and 50 per centum of all moneys collected under section 15 of this Act during any fiscal year shall be paid at the end thereof by the Secretary of the Treasury to the State in which the lands producing such moneys are located, to be expended as the State legislature of such State may prescribe for the benefit of the county or counties in which the lands producing such moneys are located: PROVIDED, That if any leased tract is in more than one State or county, the distributive share to each from the proceeds of said leased tract shall be proportional to its area in said leased tract. (43 U.S.C., sec. 315 i)

SEC. 11. That when appropriated by Congress, 33-1/3 per centum of all grazing fees received from each grazing district on Indian lands ceded to the United States for disposition under the public-land laws during any fiscal year shall be paid at the end thereof by the Secretary of the Treasury to the State in which said lands are situated, to be expended as the State legislature may prescribe for the benefit of public schools and public roads of the county or counties in which such grazing lands are situated. And the remaining 66-2/3 per centum of all grazing fees received from such grazing lands shall be deposited to the credit of the Indians pending final disposition under applicable laws, treaties, or agreements. The applicable public land laws as to said Indian ceded lands within a district created under this Act shall continue in operation, except that each and every application for nonmineral title to said lands in a district created under this Act shall be allowed only if in the opinion of the Secretary of the Interior the land is of the character suited to disposal through the Act under which application is made and such entry and disposal will not affect adversely the best public interest, but no settlement or occupation of such lands shall be permitted until ninety days after allowance of an application. (43 U.S.C., sec. 315j)

SEC. 12. That the Secretary of the Interior is hereby authorized to cooperate with any department of the Government in carrying out the purposes of this Act, and in the coordination of range administration, particularly where the same stock grazes part time in a grazing district and part time in a national forest or other reservation.
(43 U.S.C., sec. 315k)

SEC. 13. That the President of the United States is authorized to reserve by proclamation and place under national-forest administration in any State where national forests may be created or enlarged by Executive order any unappropriated public lands lying within watersheds forming a part of the national forests which, in his opinion, can best be administered in connection with existing national-forest administration units, and to place under the Interior Department administration any lands within national forests, principally valuable for grazing, which, in his opinion, can best be administered under the provisions of this Act: PROVIDED, That such reservations or transfers shall not interfere with legal rights acquired under any public-land laws so long as such rights are legally maintained. Lands placed under the national-forest administration under the authority of this Act shall be subject to all the laws and regulations relating to national forests, and lands placed under the Interior Department administration shall be subject to all public-land laws and regulations applicable to grazing districts created under authority of this Act. Nothing in this section shall be construed so as to limit the powers of the President (relating to reorganizations in the executive departments) granted by title 4 of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved March 3, 1933. (43 U.S.C., sec. 315 l)

SEC. 14. That section 2455 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 2455. Notwithstanding the provisions of section 2357 of the Revised Statutes (U. S. C., title 43, sec. 678) and of the Act of August 30, 1890 (26 Stat. 391), it shall be lawful for the Secretary of the Interior to order into market and sell at public auction, at the land office of the district in which the land is situated, for not less than the appraised value, any isolated or disconnected tract or parcel of the public domain not exceeding one thousand five hundred and twenty acres which, in his judgment, it would be proper to expose for sale after at least thirty days' notice by the land office of the district in which such land may be situated: PROVIDED, That for a period of not less than thirty days after the highest bid has been received, any owner or owners of contiguous land shall have a preference right to buy the offered lands at such highest bid price, and where two or more persons apply to exercise such preference right the Secretary of the Interior is authorized to make an equitable division of the land among such applicants, but in no case shall the adjacent land owner or owners be required to pay more than three times the appraised price: PROVIDED FURTHER, That any legal subdivisions of the public land, not exceeding seven hundred and sixty acres, the greater part of which is mountainous or too rough for cultivation, may, in the discretion of the said Secretary, be ordered into the market and sold pursuant to this section upon the application of any person who owns land or holds a valid entry of lands adjoining such tract, regardless of the fact that such tract may not be isolated or disconnected within the meaning of this section: PROVIDED FURTHER, That this section shall not defeat any valid right which has already attached under any pending entry or location. The word 'person' in this section shall be deemed to include corporations, partnerships, and associations." (43 U.S.C., sec. 1171)

SEC. 15. The Secretary of the Interior is further authorized, in his discretion, where vacant, unappropriated, and unreserved lands of the public domain are so situated as not to justify their inclusion in any grazing district to be established pursuant to this Act, to lease any such lands for grazing purposes, upon such terms and conditions as the Secretary may prescribe: PROVIDED, That preference shall be given to owners, homesteaders, lessees, or other lawful occupants of contiguous lands to the extent necessary to permit proper use of such contiguous lands, except that when such isolated or disconnected tracts embrace seven hundred and sixty acres or less, the owners, homesteaders, lessees, or other lawful occupants of lands contiguous thereto or cornering thereon shall have a preference right to lease the whole of such tract, during a period of ninety days after such tract is offered for lease, upon the terms and conditions prescribed by the Secretary. (43 U.S.C., sec. 315m)

SEC. 16. Nothing in this Act shall be construed as restricting the respective States from enforcing any and all statutes enacted for police regulation, nor shall the police power of the respective States be, by this Act, impaired or restricted, and all laws heretofore enacted by the respective States or any thereof, or that may hereafter be enacted as regards public health or public welfare, shall at all times be in full force and effect: PROVIDED, HOWEVER, That nothing in this section shall be construed as limiting or restricting the power and authority of the United States. (43 U.S.C., sec. 315n)

SEC. 17. The President shall have power, with the advice and consent of the Senate, to select a Director of Grazing. The Secretary of the Interior may appoint such Assistant Directors and such other employees as shall be necessary to administer this Act. The Civil Service Commission shall give consideration to the practical range experience in public-land States of the persons found eligible for appointment by the Secretary as Assistant Directors or graziers. No Director of Grazing, Assistant Director, or grazier shall be appointed who at the time of appointment or selection has not been for one year a bona-fide citizen or resident of the State or of one of the States in which such Director, Assistant Director, or grazier is to serve. (43 U.S.C., sec. 315o)

SEC. 18. (a) In order that the Secretary of the Interior may have the benefit of the fullest information and advice concerning physical, economic, and other local conditions in the several grazing districts, there shall be an advisory board of local stockmen in each such district, the members of which shall be known as grazing district advisers. Each such board shall consist of not less than five nor more than twelve members, exclusive of wildlife representatives, one such representative to be appointed by the Secretary, in his discretion, to membership on each such board. Except for such wildlife representatives, the names of the members of each district advisory board shall be recommended to the Secretary by the users of the range in that district through an election conducted under rules and regulations prescribed by the Secretary. No grazing district adviser so recommended, however, shall assume office until he has been appointed by the Secretary and has taken an oath of office. The Secretary may, after due notice, remove any grazing district adviser from office if in his opinion such removal would be for the good of the service.

(b) Each district advisory board shall meet at least once annually at a time to be fixed by the Director of Grazing, or by such other officer to whom the Secretary may delegate the function of issuing grazing permits, and at such other times as its members may be called by such officer. Each board shall offer advice and make a recommendation on each application for such a grazing permit within its district: PROVIDED, That in no case shall any grazing district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested. Each board shall further offer advice or make recommendations concerning rules and regulations for the administration of this Act, the establishment of grazing districts and the modification of the boundaries thereof, the seasons of use and carrying capacity of the range, and any other matters affecting the administration of this Act within the district. Except in a case where in the judgment of the Secretary an emergency shall exist, the Secretary shall request the advice of the advisory board in advance of the promulgation of any rules and regulations affecting the district. (43 U.S.C., sec. 315o-1)

AN ACT

To authorize the Secretary of the Interior to issue patents to States under the provisions of section 8 of the Act of June 28, 1934 (48 Stat. 1269), as amended by the Act of June 26, 1936 (49 Stat. 1976), subject to prior leases issued under section 15 of the said Act.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the Secretary of the Interior in adjudicating State exchanges, under section 8 of the Act of June 28, 1934 (48 Stat. 1269), as amended by the Act of June 26, 1936 (49 Stat. 1976), involving lands embraced in outstanding leases under section 15 of said Act issued prior to the filing of the State exchange application, is hereby authorized upon the request of any State to issue patent to the State, subject to such outstanding lease: PROVIDED, That the United States shall not by reason of the issuance of any such patents be required to account to the State for any money due and collected prior thereto as rent for any part of the then-current annual rental period except as is now provided by law. (43 U.S.C., sec. 315p)

Approved, August 24, 1937 (50 Stat. 748).

AN ACT

(The Pierce Act)

To provide for the leasing of State, county, and privately owned lands for the purpose of furthering the orderly use, improvement and development of grazing districts.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the Secretary of the Interior in his discretion is authorized to lease at rates to be determined by him any State, county, or privately owned lands chiefly valuable for grazing purposes and lying within the exterior boundaries of a grazing district when, in his judgment, the leasing of such lands will promote the orderly use of the district and aid in conserving the forage resources of the public lands therein: PROVIDED, That no such leases shall run for a period of more than ten years and in no event shall the grazing fees paid the United States for the grazing privileges on any of the lands leased under the provisions of this section be less than the rental paid by the United States for any of such lands: PROVIDED FURTHER, That nothing in this section shall be construed as authorizing the appropriation of any moneys except that moneys heretofore or hereafter appropriated for construction, purchase, and maintenance of range improvements within grazing districts, pursuant to the provisions of sections 10 and 11 of the Act of June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976), may be made additionally available by Congress for the leasing of land under this Act.

SEC. 2. That the lands leased under this Act shall be administered under the provisions of the Act of June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976), commonly known as the Taylor Grazing Act.

SEC. 3. That contributions received by the Secretary of the Interior under section 9 of the Act of June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976), toward the administration, protection, and improvement of any district shall be additionally available for the leasing of lands under this Act.

SEC. 4. All moneys received by the Secretary of the Interior in the administration of leased lands as provided in section 2 of this Act shall be deposited in the Treasury of the United States as miscellaneous receipts, but are hereby made available, when appropriated by the Congress, for the leasing of lands under this Act and shall not be distributed as provided under sections 10 and 11 of the Act of June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976). (43 U.S.C., sec. 315m-1)

Approved, June 23, 1938 (52 Stat. 1033).

AN ACT

Relating to the administration of grazing districts.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the Secretary of the Interior may require field employees of the Grazing Service to furnish horses and miscellaneous equipment necessary for the performance of their official work and may provide at Government expense forage, care, and housing for such animals and equipment. (43 U.S.C., sec. 315o-2)

Approved, December 18, 1942 (56 Stat. 1067).

AN ACT

Authorizing the head of the department or agency using the public domain for national defense purposes to compensate holders of grazing permits and licenses for losses sustained by reason of such use of public lands for national defense purposes.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That whenever use for war or national defense purposes of the public domain or other property owned by or under the control of the United States prevents its use for grazing, persons holding grazing permits or licenses and persons whose grazing permits or licenses have been or will be cancelled because of such use shall be paid out of the funds appropriated or allocated for such project such amounts as the head of the department or agency so using the lands shall determine to be fair and reasonable for the losses suffered by such persons as a result of the use of such lands for war or national defense purposes. Such payments shall be deemed payment in full for such losses. Nothing herein contained shall be construed to create any liability not now existing against the United States. (43 U.S.C., sec. 315q)

Approved July 9, 1942 (56 Stat. 654) as amended May 28, 1948 (62 Stat. 277).

Range Management Offices
of the
Bureau of Land Management

REGION I

Swan Island Station
Portland 18, Oregon

Dist. No.	Idaho
1	Boise
2	Burley
3	Idaho Falls
4	Salmon
5	Shoshone

Dist. No.	Oregon
1	Lakeview
2	Burns
3	Vale
5	Prineville
6-7	Baker

REGION IV

238 Federal Building
Salt Lake City 9, Utah

Dist. No.	Colorado
1	Meeker
2	Denver
3	Montrose
4	Montrose
5-8	Canon City
6	Craig
7	Grand Junction

Dist. No.	Utah
1	Brigham City
2	Salt Lake City
10-~~3~~	Fillmore
4	~~Cedar City~~
5	Richfield
6-9	Monticello
7	Price
8	Vernal
3 ~~10~~	~~Nephi~~
11	Kanab

REGION II

100 Old Mint Building
Fifth and Mission Streets
San Francisco 3, California

Dist. No.	California
1	Bishop
2	Susanville

Dist. No.	Nevada
1	Elko
2	Winnemucca
3	Carson City
4	Ely
5	Las Vegas

REGION V

110 West Central Avenue
Albuquerque, New Mexico

Dist. No.	Arizona
1	St. George (Utah)
2	Kingman
3	Phoenix
4	Safford

Dist. No.	New Mexico
1	Albuquerque
2	Magdalena
3	Deming
4	Alamogordo
6	Roswell
7	Farmington

REGION III

1245 North 29th Street
Billings, Montana

Dist. No.	Montana
1	Malta
2	Miles City
3	Miles City
5	Whitehall
6	Lewistown

Dist. No.	Wyoming
W1-M4	Worland
2	Lander
3	Rawlins
4	Rock Springs
5	Pinedale

US Treasury

UNITED STATES
DEPARTMENT OF THE INTERIOR
J. A. KRUG, Secretary
BUREAU OF LAND MANAGEMENT
MARION CLAWSON, Director

THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

REVISED TO OCTOBER 1, 1949

A CENTURY OF CONSERVATION

1849 March 3, 1849 1949

OCTOBER 1949

WASHINGTON 25, D. C.

Circular No. 1779

TITLE 43—PUBLIC LANDS:
INTERIOR

Chapter I—Bureau of Land Manage-
ment, Department of the Interior

PART 161—THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

161.1 Introductory; basic policy and plan of administration.

161.2 Definitions.

161.3 Qualifications of applicants.

161.4 Classification of base properties.

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161.10 General rules of the range.

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161.12 District Advisory Boards.

161.13 Local associations of stockmen.

161.14 Open ranges and small tracts—Improvements on the Federal

161.15 Special rules for grazing districts.

161.16 Penal provisions.

161.17 Saving clause.

Sections of the Federal Range Code for grazing districts, as amended, [illegible] 161.2([illegible]), [illegible] and (23), 161.8(b) and (c), 161.9(d), (e) and (f), 161.10([illegible]), and 161.12(f), (h), and (i) were [illegible] by Circular No. 1728 of August 31, 1949.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

161.1 Introductory; basic policy and plan of administration.

(a) Purposes; general requirements. Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promote the highest use of the public lands within grazing districts which have been or hereafter are established, possession of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the public domain will be required of all users.

(b) Preference applicants. Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner provided in this section. Provision will be made for other applicants so far as Federal range remains available.

(c) Permits; temporary licenses; termination; revocation. Permits within the meaning of section 3 of the act may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing, a recommendation thereon made by the advisory board, and approval thereof given by the range manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. During the period prior to the issuance of permits, the issuance of temporary licenses will be continued. Upon the issuance of a permit within any district or portion thereof, any outstanding license or part thereof which has been granted on the basis of the qualifications on which the permit is based will be terminated. Licenses and permits will be revocable for violations of the terms thereof or for a violation of any provision of the Federal Range Code for Grazing Districts, as provided in this part. (Secs. 2, 3, 48 Stat. 1270; 43 U.S.C. 315a, 315b)

161.2 Definitions. Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management, unless the context otherwise requires:

(a) The act means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315--315m, 315n--315o-1), and all amendments thereto.

(b) The Federal Range Code for Grazing Districts means all of the rules and regulations pertaining to the administration of grazing districts.

(c) Federal range means land owned, leased, or otherwise controlled by the United States and administered by the Bureau of Land Management, Provided, That land under the control of another agency and administered by the Bureau of Land Management under cooperative agreement may be excluded from the scope of this definition by the agreement.

(d) Property means privately owned or controlled land or water used in range livestock operations.

(e) Base property means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(f) Forage land means land the principal use of which is the production of natural or cultivated feed for livestock.

(g) Land dependent by use means forage land which is of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the 5-year period immediately preceding June 28, 1934 (referred to in this part as the "priority period"), was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years in connection with substantially the same part of the public domain, now part of the Federal range, except that in any area placed within a grazing district after June 28, 1938, or in any area added to an existing grazing district after that date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be, Provided, That in any case in which a livestock operation used a base property or properties during the priority period in such manner as would, in the absence of other factors, serve to invest the property with the attribute of dependency by use, but such livestock operation subsequently ceased using such property or properties and used other base property or properties in such manner as to invest them also with dependency by use, only the latter property or properties shall be considered as dependent by use unless the former are dependent by use by reason of use by another livestock operation, Provided further, That in no event shall any land be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year from the date when the public land used in creating the dependency by use first became a part of a grazing district, except that in cases in which the lands used in creating dependency by use of a base property became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date.

The extent of the dependency by use of land shall be subject to the following:

(1) The dependency by use in no event shall exceed the average annual amount of forage that was customarily and properly utilized by the livestock operation during the priority period on that part of the public lands which, at the time of the issuance of the license or permit, is Federal range.

(2) In the event that the area of Federal range which was used in creating the dependency by use is diminished by withdrawal, appropriation, selection, or otherwise, the dependency by use shall diminish proportionately.

(3) Whenever dependency by use of more than one base property was created by the use of all or a part of certain range which was used jointly or at different seasons of the year by one or more other livestock operations in such a manner as to invest another base property or properties with the attribute of dependency by use, the relative dependency by use of each of the properties shall be proportionate to the average annual use made of the range by each of the operations.

(h) Land dependent by location means forage land which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(i) Animal-unit month, as applied to lands that are base properties, means the amount of natural or cultivated feed necessary for the complete sustenance of one cow for a period of one month; as applied to Federal range, it means that amount of grazing privileges represented by the grazing of one cow for a period of one month. For the purpose of this definition, one cow will be considered the equivalent of one horse or five sheep or five goats.

(j) Carrying capacity means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(k) Full-time water means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(l) Prior water is water which, during all or a substantial part of the five-year period immediately preceding June 28, 1934 (referred to in this part as the "priority period"), was used to service certain public range within the service area of the water for a livestock operation that was established, permanent, and continuing, and which, during the period of such use, normally involved the grazing of livestock on the same areas of public land for a certain period or periods of each year, except that in any area placed within a grazing district or added to an existing district after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be, Provided, That in any case in which a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, serve to invest such water with the attribute of priority, but such livestock operations subsequently ceased using such water or waters and used other water or waters in such manner as to invest them also with priority, only the latter water or waters shall be considered as prior unless the former are prior because of use by another livestock operation, Provided further, That in no event shall any water be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district, except that in cases wherein such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

The extent of the priority of water shall be subject to the following:

(1) The priority in no event shall exceed the average annual amount of forage that was customarily and properly utilized by the livestock operation during the priority period on that part of the lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(2) In the event that the area of Federal range which was used in creating the priority is diminished by withdrawal, appropriation, selection, or otherwise, the priority of the water shall diminish proportionately.

(m) Service area means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

(n) Free-use applicant means an applicant who resides in the immediate neighborhood of Federal range and who owns livestock kept for domestic purposes. "Livestock kept for domestic purposes" means livestock whose products are consumed or whose work is used directly and exclusively by the family of the applicant. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.3 Qualifications of applicants.

(a) Definition of qualifications. An applicant for a grazing license or permit is qualified if engaged in the livestock business and:

(1) Is a citizen of the United States, or

(2) Has filed a declaration of intention to become a citizen: Provided, That an applicant who has filed such declaration but has not filed a petition for naturalization before a court of competent jurisdiction within seven years from the date of filing the declaration or, having filed such petition, has failed to attain citizenship within a reasonable time thereafter and is unable to show any

satisfactory reason for such failure, shall be disqualified to receive a license or permit or any renewal thereof until he has actually attained citizenship, and any existing license or permit held by such person shall become void at the end of the grazing season during which the disqualification arises, or

(3) Is a group, association, or corporation which is authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, and the controlling interest in which is vested in a citizen or citizens or persons who would be qualified as individual applicants under subparagraph (2) of this paragraph.

(b) Effect of disqualification arising through operation of law. Notwithstanding the above provisions of this section, the acquisition of rights in base property by an unqualified applicant through operation of law or testamentary disposition will not affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, to the extent based on such property, for a period of two years after such acquisition. (Sec. 3, 48 Stat. 1270; 43 U.S.C. 315b)

161.4 Classification of base properties. For the purpose of determining the proper use of the base properties of all applicants and their relative dependence upon the Federal range, land and water conditions and other factors affecting livestock operations in the area will be considered and determined according to customary use and best practices for good range management. Base properties will be classified as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

(sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.5 Rating and classification of Federal range.

(a) Carrying capacity; seasons and maximum annual period of use. For the purpose of stabilizing the livestock industry, determining the proper use of the Federal range, and other purposes, the carrying capacity of each administrative unit or area in a grazing district will be rated, and each will be classified for the proper season, or seasons, if necessary, of its use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range lying therein during any one year.

(b) Wildlife; allowance for maintenance. In each grazing district a sufficient carrying capacity of Federal range will be provided, following consultation with and the advice of wildlife interests, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) Segregation of ranges for particular kinds of livestock. When the proper use of the Federal range or an orderly administration of the act requires it, certain areas may be designated for use exclusively by a certain kind or class of livestock. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.6 Issuance of licenses and permits.

(a) Free-use licenses and permits. Free-use licenses or permits first will be issued to free-use applicants for not to exceed the number of livestock kept for domestic purposes. Such livestock shall be grazed on Federal range in the immediate neighborhood of the residence of the licensee or permittee. (Sec. 5, 48 Stat. 1271; 43 U.S.C. 315d)

(b) Regular licenses and permits; order of issuance; number of livestock. Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(1) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(2) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

(3) To other applicants, licenses or permits for the number of livestock for which range is available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

After licenses or permits have been issued on the basis of the foregoing, any licensee or permittee may, within the discretion of the range manager, and on written order by him, be allowed to use the amount of Federal range grazing privileges represented by his license or permit over any period of time within the season or seasons for which the Federal range is classified as proper for use, Provided,

(i) Such period does not exceed the maximum period of time for which any licensee or permittee is allowed to use the Federal range during any one year;

(ii) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(iii) Such use will not be detrimental to the Federal range; and

(iv) Such use will not adversely affect other licensees or permittees. (Sec. 3, 48 Stat. 1270; 43 U.S.C. 315b)

(c) Terms and conditions. The issuance and continued effectiveness of all regular licenses and permits will be subject to the following conditions and requirements:

(1) No license or permit will be issued to any applicant unless he is able to show that he possesses adequate feed to support his licensed or permitted livestock during the period of time for which they are to be off the Federal range.

(2) No license or permit will provide for the grazing of livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the carrying capacity of the range to be used.

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately.

(6) If at any time during the life of a license or permit the holder thereof ceases to make substantial use of his base property in connection with his year-round livestock operation, the license or permit will be subject to a proportionate reduction.

(7) If at any time during the life of a license or permit the holder thereof loses ownership or control either of all or a part of his base property or of all or a part of such other lands or grazing privileges as are necessary to his year-round livestock operation, and fails within a reasonable time, as directed by the range manager after submission of the matter to the advisory board for recommendation, to obtain ownership or control of other base property, lands or grazing privileges sufficient to insure such a year-round operation, the license or permit will be subject to a proportionate reduction.

(8) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(9) In the event of failure for any two consecutive years either to offer a base property in an application for a license or permit, or to accept a license or permit offered pursuant to such an application, such base property will lose its dependency by use or priority.

(10) The failure for any two consecutive years to make substantial use of the grazing privileges, authorized under an accepted license or permit, may result in the loss of the dependency by use or priority of the base property in proportion to the failure to use such license or permit.

(11) Non-use, in whole or in part, of a license or permit may be authorized by the range manager upon application by the licensee or permittee, after reference to the advisory board for recommendation, for the following reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit because of a violation of any of the provisions of the Federal Range Code for Grazing Districts may result in the loss of the dependency

by use or priority of the base property upon which the license or permit is based. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

(13) In order to stabilize livestock operations dependent upon the Federal range, no readjudication of any license or permit will be made on the claim of any applicant or intervener with respect to the dependency by use or priority of the base property where such qualification, upon which the license or permit was issued, has been recognized for a period of three years or more, except in a case where such qualification would otherwise be subject to adjustment under the provisions of this part.

(d) Applicants having more than one class of property; reductions; allotments; agreements. Nothing contained in this section will prevent an applicant who owns or controls properties in more than one class from having such properties considered separately in the order and manner set forth in this section. If necessary to reach the carrying capacity of any parts of the Federal range after licenses or permits have been issued, reductions on an equal percentage basis will be imposed on licensees or permittees so far as their grazing activities involve the use of such parts. Reductions in all cases will be made by reducing the numbers of livestock or the time on the Federal range area involved, or by both methods, Provided, That the regional administrator may recommend, for the approval of the Secretary of the Interior, a limit below which no license or permit in that area will be reduced. Allotments of Federal range will be made to licensees or permittees when conditions warrant, and divisions of the range by agreement or by former practice will be respected and followed where practicable. Increases in carrying capacity will be participated in by existing licensees and permittees to the extent of their respective qualifications. Licenses or permits to use any range available thereafter may be granted to other applicants. (Sec. 2, 48 Stat.1270; 43 U.S.C. 315a)

(e) Administration of lands additionally available. Any land added to a grazing district, or otherwise made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315m-1—315m-4), the revocation of a withdrawal, or the cancellation or relinquishment of a homestead entry or claim, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management. (Secs. 2, 3, 48 Stat. 1270; 43 U.S.C. 315a, 315b) (52 Stat. 1033; 43 U.S.C. 315m-1--315m-4)

(f) Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940. Any licensee or permittee who enters military service, as defined in section 101 (1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179: 50 U.S.C. 511 (1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the range manager an application, in triplicate, the original of which shall be sworn to before a notary public or other officer authorized to administer oaths in the State in which the applicant resides, or before the officer in immediate command and holding a commission in the branch of the Service in which the applicant is engaged, which shall set forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the range manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner terminated upon further application to the range manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, such a temporary license shall be revocable as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the range manager on an application for suspension or termination of a license or permit may be appealed by the applicant, licensee, or permittee to an examiner of the Bureau of Land Management, and from his decision to the Director of the Bureau and to the Secretary of the Interior, respectively. The procedure in such appeals shall conform as nearly as practicable to the procedure prescribed in section 161.9. (Secs. 2, 3, 9, 48 Stat. 1270, 1271; 43 U.S.C. 315a, 315b, 315h) (Secs. 501, 507, 54 Stat. 1187, 1188; 50 U.S.C. 561, 567)

161.7 Transfers of base properties and licenses or permits.

(a) Transfer of base property: effect. A transfer of a base property, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if otherwise properly qualified, to all or to such part of a license or permit as is based on the property transferred, and the original license or permit will be terminated or decreased by such transfer. In any instance in which a transfer, or a different vesting in any manner, of a leasehold interest in land may result in an interference with the stability of livestock operations or with proper range management, such land will lose its dependency by use or dependency by location, as the case may be, upon a find to that effect by the regional administrator, after reference of the matter to the district advisory board for its recommendation.

(b) Transfer of a license or permit; limitations; effects; consent of owner or encumbrancer. Upon application by a licensee or permittee, and after reference to the advisory board for recommendation, the range manager may allow a license or permit based on ownership or control of land to be transferred to other land or a license or permit based on ownership or control of water to be transferred to other water within the same service area, Provided, That such transfer will not interfere with the stability of livestock operations or with proper range management and will not affect adversely the established local economy, Provided further, That no such transfer will be allowed without the written consent of the owner or owners and any encumbrancers of the base property from which the transfer is to be made, except that when the applicant for such transfer is a lessee without whose established livestock operations such property would not have dependency by use or priority, such consent will not be required. Upon the allowance of a transfer under this paragraph, the base property from which the transfer is made shall lose its dependency by use or priority to the extent of the license or permit transferred.

(c) Transfer of dependency by use on same land. Whenever a licensee or permittee owns or controls land dependent by use which has a carrying capacity in excess of that necessary for the support of the licensed or permitted livestock during that period of the year for which they are to be kept on such land, the excess land may be disposed of or may be used for purposes other than the support of such livestock; upon application by the licensee or permittee, and after reference to the advisory board for recommendation, the range manager may allow the dependency by use allocable to such land to be transferred to that part which continues to be used for the support of such livestock Provided, That no such transfer will be allowed without the written consent of the owner or owners and any encumbrancers of the land from which the transfer is to be made. Upon the allowance of a transfer under this paragraph, the land from which the transfer is made shall lose its dependency by use. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.8 Fees; time of payment; refunds.

(a) Free-use licenses and permits. No fee will be charged for the issuance of a free-use license or permit.

(b) Regular licenses and permits. Each regular licensee or permittee will be charged for each head of livestock, for each month covered by the license or permit, a grazing fee for the use of the range and a range improvement fee. Range improvement fees, upon the recommendation of the district advisory board and approval of the Secretary, may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any governmental agency--State or Federal, or any person, association, or corporation. Grazing and range improvement fees will be assessed on the basis of semi-monthly periods, beginning on the first and sixteenth day of the month and ending, respectively, on the fifteenth and the last day of the month. All livestock six months of age or over and allowed on the Federal range, will be counted at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No grazing or range improvement fees will be charged for livestock under six months of age. A minimum annual charge of $1.00 will be made on all regular licenses or permits.

Note: Notice dated August 18, 1947 (12 F.R. 5731) was given that effective August 6, 1947, and pursuant to the act of August 6, 1947 (61 Stat. 790) a grazing fee of six cents per animal unit month and a range-improvement fee of two cents per animal unit month will be charged each regular licensee or permittee for each month of the grazing period covered by the licenses or permits, as follows:

1. Grazing fee - six cents per head for cattle and horses, one and one-fifth cents per head for sheep and goats.

2. Range-improvement fee - two cents per head for cattle and horses, two-fifths cent per head for sheep and goats.

Provided, That as to licenses or fee notices issued prior to August 6, 1947, three-fourths of any collections made thereunder on or after August 6 shall be considered as from grazing fees and one-fourth as from range-improvement fees, and no increase in fees shall be effected hereunder as to such licenses or fee notices until the next license or fee notice is issued.

(c) Crossing permits. Unless notice is otherwise given, a fee of one-half of a cent per head per day, for cattle and horses, and one-tenth of a cent per head per day, for sheep and goats, will be charged for a crossing permit, which will be issued upon application by any person showing the necessity of crossing the Federal range for proper and lawful purposes: Provided, That in cases where the trail to be used is so limited and defined that no material amount of forage will be consumed in transit the permit will be issued without charge: Provided further, That no fee will be charged for a crossing permit to the extent that it involves the use of a stock driveway created under section 10 of the stock-raising homestead act of December 29, 1916 (39 Stat. 862; 43 U.S.C. 300).

(d) Payment of fees; reduction or increase in numbers; extension of periods of use. All fees for crossing permits shall be paid at the time of the issuance of the permit. Payments of fees for regular licenses or permits shall be made prior to the beginning of each grazing period shown on the license or permit. Licenses or permits will be effective only when all fees due thereunder have been paid. No license or permit shall be issued or renewed until payment of all amounts found to be due to the United States under the Federal Range Code for Grazing Districts has been made. Upon application by a transferee of any property or part thereof on the basis of which a license or permit has been issued, a new license or permit representing that part of the grazing privileges to which he may thereby become entitled shall be issued to him. In case of such transfer, the transferor shall not be entitled to a refund of any portion of the fees that have been properly paid and that are applicable to the period subsequent to the transfer.

A licensee or permittee will be required to make payment of fees in accordance with the terms of the license or permit unless he notifies the range manager in writing, more than thirty days before the effective date of any grazing period shown, that he desires to make temporary use of the grazing privileges in a manner other than that shown in the license or permit. Such change will be allowed if due to annual fluctuations ordinarily occurring in livestock operations or to the necessity of conserving or protecting the range. When the requested change is due to financial reasons, such as foreclosure, or other reasons beyond the licensee's or permittee's control, it may be granted for one year or longer, after reference to the advisory board for recommendation, and the approval of the range manager. Fee notices in each case will issue accordingly.

Upon application by a licensee or permittee, and after reference to the advisory board for recommendation, the range manager may allow an extension of the applicant's period or periods of use of the Federal range during any year or season thereof. A receipted supplemental fee notice covering the additional grazing privileges will constitute authority to use the range for the extended period.

(e) Refunds. No refund of fees properly paid will be made because of a failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

> (1) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Secretary of the Interior will in his discretion remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period as long as the emergency exists.
>
> (2) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be made under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U.S.C. 95, et seq.).

(3) When a license or permit is suspended under section 501 (2) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1187; 50 U.S.C. 561 (2)), any fees that have been paid for the period of suspension will be refunded and any fees that are or that may become due for such period will be remitted. (Secs. 3, 5, 6, 48 Stat. 1270--1272; 43 U.S.C. 315b, 315d, 315e)(Secs. 501, 507, 54 Stat. 1187, 1188; 50 U.S.C. 561 (2), 567)

161.9 Procedure in applications, hearings and appeals.

(a) Filing and consideration of applications; recommendations; service of notice. Each year the regional administrator will set a date for each district in his region prior to which all applications for grazing licenses or permits in the district must be filed. Failure to file applications before such date will result in their rejection for that year unless reasonable justification for a belated filing is shown. Whenever an application is filed for a license or permit based in whole or in part on a property which has not served as a base for a license or permit during the grazing season immediately preceding such filing, all users who might be directly affected by favorable action on such application will be notified of its filing. All applications for grazing licenses or permits, except those of district advisers, will be considered first by the advisory board of the district in which the license or permit is sought. The advisory board will make its recommendation to the range manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable, the range manager will so notify the applicant by ordinary mail. If the recommendation is to any extent adverse, notice thereof will be served on the applicant personally either by the range manager or by such person as may have been designated by him, or by registered letter sent to the applicant at the address given in his application. Such notice will set out the reason or reasons set forth by the advisory board for the adverse recommendation and will name a place and date, not less than ten days thereafter, when protests against the recommendation will be heard: Provided, however, That in any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may, in its discretion, decide that a protest meeting be not held; whereupon, the range manager shall act upon the recommendation of the board as its final recommendation.

(b) Hearing of protests; reconsideration by advisory board; service of notice. At the dates and places fixed for hearing protests any party in interest may appear, either in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the range manager. If such recommendation is favorable to the applicant, and the range manager approves, he will notify the applicant thereof by ordinary mail. If the recommendation is to any extent adverse, and the range manager approves, a notice giving the reason or reasons therefor will be served on the applicant either personally by the range manager or such person as may have been designated by him, or by registered letter sent to the applicant at the address given in his application. Such notices will constitute the range manager's final decisions for purposes of appeal.

(c) Allowance or rejection of application by the range manager; modification; service of notice; appeal to examiner; intervention. The range manager is vested with the authority in the light of all facts and circumstances, after first having submitted an application to the district advisory board, to issue or to refuse to issue a grazing license or permit. If the action taken by the range manager on any application is substantially different from that recommended by the advisory board, a notice including a recital of the specific reasons for the action taken will be served on the applicant and on any other applicant or applicants adversely affected by such action, either personally by the range manager or by such person as may have been designated by him or by registered letter sent to the applicant at the address given in his application. The notice given the particular applicant will advise him of his privilege to file an appeal to an examiner. The appeal must be filed with the regional administrator within fifteen days following the receipt of the notice. The appeal shall be accompanied by specifications of error setting forth in a clear and concise manner the matters upon which it is based. Any party or parties who may be directly affected by the decision on the appeal will be notified by the regional administrator of the filing of the appeal and advised that a written request to intervene in the appeal may be filed. Such a party shall be known and designated as an intervener. When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

The range manager, or any intervener may, within twenty days after receipt of notification that an appeal has been filed, file with the regional administrator, after having served a copy on the appellant, a written motion that the appeal be dismissed for the reason that all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The regional administrator shall advise all other parties in interest that such a motion has been filed.

The appellant, or any other party in interest, may file a written answer within twenty days after service of motion upon him. The regional administrator shall transmit the motion, the proofs of service, and the answers to the examiner who shall rule on the motion, and, if the motion is sustained, dismiss the appeal without prejudice to the appellant's privilege to appeal to the Director, pursuant to paragraph (j) of section 161.9.

(d) Cancellation of licenses or permits; service of appeal to examiner. Licenses or permits will be subject to cancellation to the extent that they have been improperly issued. In any case in which it shall appear to the Bureau of Land Management that a license or permit confers grazing privileges in excess of those properly allowable under the act and the Federal Range Code for Grazing Districts, the range manager will notify the licensee or permittee that the license or permit is thereby held for cancellation either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such cancellation should not be made final. Such notice will set forth fully the reasons for the proposed cancellation and will be served on the licensee or permittee either personally by the range manager or by such person as may have been designated by him or by registered mail sent to the licensee or permittee at his last address of record. In case of failure of the licensee or permittee to show cause within the fifteen days allowed, the license or permit will be canceled to the extent indicated in the notice. The range manager will consider any cause shown and, if satisfied of its sufficiency, will close the case. If the range manager is not satisfied that sufficient causes have been shown, he will notify the licensee or permittee that the cancellation will be made final unless an appeal to an examiner of the Bureau of Land Management is filed within fifteen days from receipt of notice. Such notice will be served on the licensee or permittee either personally by the range manager of by such person as may have been designated by him or by registered mail sent to the licensee or permittee at his last address of record. The appeal must be filed with the regional administrator and shall be accompanied by specifications of error setting forth in a clear and concise manner the matters upon which it is based. So far as practicable, the appeal thereafter will follow the procedure prescribed in the following paragraphs of this section, except that any decision by the range manager or the examiner on a matter arising under this paragraph will not become effective pending the disposition of a timely appeal to the examiner, the Director or the Secretary of the Interior, as the case may be.

(e) Fixing of place and date for hearing before examiner on appeal; notice. Upon the filing of an appeal and specifications of error, the regional administrator will notify the Chief Examiner, naming a place within or near the district at which a hearing will be held. The Chief Examiner will then advise the regional administrator of the date of hearing, which will be not less than ten days after the date of the filing of the appeal, and the regional administrator thereupon will notify the appellant, and all parties who may be directly affected by the decision on the appeal, of the time and place of hearing, which shall be held by an examiner designated by the Director of the Bureau of Land Management.

(f) Authority of examiner. The examiner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses, to administer oaths, to call and question witnesses, and to make findings of fact, conclusions of law, and a decision. The examiner also shall have authority to take or to cause depositions to be taken whenever the ends of justice would be served thereby, in accordance with the procedure for taking depositions set out in the Rules of Practice (43 CFR Part 221). The examiner may stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges, and the same parties or their predecessors in interest. The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted because of the absence of witnesses only in accordance with the Rules of Practice (43 CFR Part 221). In other cases continuances may be granted only when the ends of justice will be served thereby.

Continuances will not be granted unless it appears that they are clearly justified and that a timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the other parties. The other parties shall have five days to file an objection to the continuance if they so desire. The examiner will then rule on the request, and, if the request is granted, set a new date for the hearing.

(g) Conduct of hearing before examiner. The appellant, the range manager, and recognized interveners will stipulate as far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented and issues which clearly appear to be unnecessary

to a proper disposition of the case will be excluded; Provided, That the party asserting such an issue may state briefly for the record the substance of the proof which otherwise would be offered in support of the issue. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties. The range manager, or his representative, will then state the grounds of the decision from which the appeal has been taken, together with such explanation as may be deemed necessary, and may call and examine witnesses on the issues involved. Upon the conclusion of this testimony the appellant shall present his case, following which recognized interveners may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy. All oral testimony shall be under oath, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. Objections to evidence will be ruled upon by the examiner and exceptions duly noted, and such exceptions will be considered upon an appeal from the decision of the examiner. In noting an exception to a ruling sustaining an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence. The examiner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof.

(h) Witness fees. Under the subpoena issued a witness will be entitled to a witness fee of $1.50 per day for the time in attendance at the hearing and the time necessarily spent in travel from his residence to the place of hearing and return, plus five cents per mile for the distance necessarily traveled. Witnesses who attend hearings so far removed from their residences as to prohibit return thereto from day to day will be allowed a per diem of $3.00 for expenses of subsistence in addition to witness fees for each day of actual attendance and for each day necessarily occupied in traveling to and from hearings. A subpoena may be served only in the county in which the hearing is to be held, and a witness cannot be compelled to appear outside of such county. Claims for witness fees and mileage will be presented on Form No. 1-327, properly certified by an authorized certifying officer, and will be submitted in the usual way for payment.

(i) Findings of fact and decision by examiner; notice; submission to Director of the Bureau of Land Management. As promptly as possible following the termination of the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law and will render a decision upon all material issues of fact, law and discretion presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. In any case, he must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any appeal. A copy thereof shall be sent by registered mail to the appellant and all interveners: Provided, however, that the Director of the Bureau of Land Management may require, in specific cases, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by the Rules of Practice (43 CFR Part 221).

(j) Notice of appeal to the Director of the Bureau of Land Management; furnishing copies of the record. Within ten days after the receipt of the decision of the examiner any party desiring to appeal to the Director of the Bureau of Land Management shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the appellant and to the interveners, at a charge of five cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervener is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed in the office of the Director.

(k) Effect of decision suspended pending appeal. An appeal shall suspend the effect of the decision appealed from pending the decision on appeal. However (1) the officer making a decision, either initially or on appeal, may, in his discretion when the orderly administration of the range or other public interest requires, provide, in the decision or by order made before an appeal is taken therefrom, that the decision shall be in full force and effect pending the decision on appeal, and (2) the officer to whom an appeal is taken may, in his discretion when the orderly administration of the range or other public interest requires, by order provide that the decision appealed from shall be in full force and effect pending the decision on appeal. Any action taken by the range manager pursuant to a decision shall be subject to modification or revocation by the Director or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under sec. 10(c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

(l) Appeals to the Director of the Bureau of Land Management. An appeal from the decision of the examiner to the Director of the Bureau of Land Management shall be filed, together with any brief desired in support thereof, within thirty days after date of receipt of the transcript of testimony, or, in the event the transcript of testimony is not requested, such appeal shall be filed within thirty days after receipt of the examiner's decision, in the office of the Director. A copy of the appeal and any brief in support thereof must be served on each party of record, either personally or by registered mail. Any party of record opposing the appeal will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in said office a reply brief, if he so desires, a copy of which must be served upon the appellant in the same manner. Evidence of service of appeals and briefs must be furnished. The appeal in other respects shall be made in accordance with the Rules of Practice (43 CFR Part 221).

No adjudication of grazing privileges will be set aside on appeal if it appears that it is reasonable and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts.

(m) Appeals to the Secretary of the Interior. An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with the Rules of Practice (43 CFR Part 221).

(n) Record as basis of decisions: definition of record. No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence.

The transcript of testimony and exhibits together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

161.10 General Rules of the Range.

(a) Acts Prohibited. The following acts are prohibited on the Federal range:

(1) Grazing livestock upon or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit; whether regular or free-use, or a crossing permit.

(2) Grazing livestock upon or driving livestock across the Federal range, including stock driveways, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(3) Allowing livestock to drift and to graze on Federal range, including stock driveways, without a license or permit, either regular or free-use.

(4) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(5) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(6) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law, Provided, That permits to carry on controlled burning of vegetative cover or brush may be issued by the Bureau of Land Management in proper cases, such permits to be subject to such conditions as the Bureau of Land Management may see fit to impose, and to all State laws and regulations concerning such burning.

(7) Maliciously molesting, or driving from the Federal range livestock lawfully grazing thereon under an appropriate license or permit.

(b) Rules of fair range practice. The following rules of fair range practice shall be complied with by all licensees and permittees, both regular and free-use:

(1) The provisions of statutory law of any State in which grazing districts are located with reference to the branding of livestock and sanitary requirements are hereby incorporated as a part of the Federal Range Code for Grazing Districts and all licensees and permittees shall comply with the provisions in effect in the State or States in which any part of the grazing district or districts in which their licenses or permits are to be effective are located.

(2) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats, and ten miles per day for cattle or horses, Provided, That an increased or decreased rate of travel may be prescribed in such permit if, in the discretion of the range manager, the circumstances in any given case so require.

(3) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, shall pay a proportionate share of the cost of managing livestock licensed or permitted within the range area in instances wherein associations for such management have been formed, and shall bed sheep and goats according to instructions issued by the Bureau of Land Management. Upon request by the majority of the users of any community allotment of Federal range, the Bureau of Land Management may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements by the Bureau of Land Management, the provisions of State law on the subject shall be regarded as applicable. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.11 Procedure for enforcement of rules and regulations.

(a) Service of notice. Whenever it appears that there has been any willful violation of any provision of the act or of the Federal Range Code for Grazing Districts, the range manager will cause the alleged violator and any interested lien holder who has filed notice of his lien with the Bureau of Land Management to be served with a written notice, which will set forth the act or acts constituting such violation and in which reference will be made to the provision or provisions of the act or the Federal Range Code for Grazing Districts alleged to have been violated. Such notice may be served in person or by registered mail and the affidavit of the person making personal service or the registry receipt shall be preserved.

(b) Unlawful grazing on Federal range; removal of livestock; impoundment. Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice of his lien with the Bureau of Land Management will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(c) Amicable settlement of civil cases involving damage to Government property. All offers of settlement for damage to Federal range or to other property of the United States resulting from an alleged violation of any provision of the act or of the Federal Range Code for Grazing Districts will be transmitted by the regional administrator, with his recommendation, to the Director of the Bureau of Land Management for consideration. An offer of settlement will not constitute satisfaction of civil liability for the damage involved until finally accepted by him, and in no event will it relieve the violator of criminal liability. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered and until payment of any amount due as grazing fees has been made.

(d) Disciplinary action for violations. The regional administrator is authorized to reduce or revoke a grazing license or permit or to deny renewal thereof for a clearly established violation of the terms or conditions of the license or permit or for a violation of any of the provisions of the Federal Range Code for Grazing Districts. Before any license or permit is reduced or revoked, or renewal thereof denied, because of such a violation, however, the regional administrator will cause the licensee or permittee to be served with a written notice which will set forth the act or acts constituting the violation and an estimate of the amount of damage resulting therefrom. Such notice also will refer to the terms or conditions of the license or permit or to the provision or provisions of the Federal Range Code for Grazing Districts alleged to have been violated. The notice will cite the licensee or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license or permit should not be reduced or revoked and satisfaction of damages made. The notice may be served in person or by registered mail and the affidavit of the person making personal service or the registry receipt shall be preserved.

The hearing before the examiner upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The licensee or permittee may appear in his own behalf or by counsel. The evidence shall be confined to the commission of the acts charged and the amount of damages, if any, due the United States. If upon the hearing of the order to show cause the violation with which the licensee or permittee is charged is established to the satisfaction of the examiner, he will render a decision finding the amount of damages and directing the regional administrator to reduce or revoke the license or the permit, if the facts so warrant.

Upon the failure of the person served in the notice to appear at the time and place designated in the notice, and in the absence of a good and sufficient showing to the examiner of a reason for his failure to appear, the examiner may direct the regional administrator to reduce or revoke the license or permit, as the violations charged in the notice and the amount of damages alleged may warrant.

Appeal from the decision of the examiner on any matter under this section shall be made in accordance with the provisions of paragraphs (j), (k), and (l) of section 161.9, and appeal to the Secretary of the Interior from the decision of the Director shall be made under paragraph (m) of section 161.9.

(e) Bonds for violations. Whenever a livestock operator commits a willful or wanton violation of any provision of these rules or has repeatedly committed violations, the regional administrator is authorized to require him to furnish a bond in an amount sufficient to cover all probably damage that may result from his violations during the ensuing year. The bond may be either a cash or a surety bond and will be in a form approved by the Director of the Bureau of Land Management. Upon the failure to furnish such bond when so required, the regional administrator is authorized to refuse to issue or renew a license or permit, or to revoke an existing license or permit. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.12 District Advisory Boards.

(a) Authorization for Establishment; Number of Members; Qualifications. Section 18 of the act provides that there shall be an advisory board of local stockmen in each grazing district. The regional administrator will fix the number of members to be elected to such board in each district, such number to be not less than five and not more than twelve, exclusive of a wildlife representative who will not be elective but will be appointed by the Secretary of the Interior. The regional administrator may fix the number of district advisers to be elected as representatives of each class of stockmen, according to the kind of livestock owned, or may fix the number to be elected from each voting precinct established by him, or both, provided that the free-use licensees or permittees in each district will be entitled to one representative, who shall be a free-use licensee or permittee. All district advisers shall be elected in the manner provided in this section and, excepting the wildlife representatives, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

(b) Elections; Time and Place of Holding; Notice. An election of district advisers for each grazing district will be held within ninety days after the publication in the Federal Register of the order establishing the district, and annually thereafter. The region administrator may divide the district into voting precincts and will designate a voting place within or near each district or precinct. The range manager will give notice of the time and place or places of holding an election in one or more newspapers of general circulation in the district, by posting in the office of the regional administrator and in the office of the range manager and by posting in such other public places as may be necessary to give the matter proper publicity. No election shall be held to be invalid by reason of failure to give any of the foregoing notices unless it shall be made to appear that there was a failure to give substantial notice.

(c) Elections; Qualifications of Electors. Only those persons who are qualified to receive regular or free-use licenses or permits will be allowed to vote in any election held pursuant to section 18 of the act, Provided, That in any new grazing district hereinafter established and embracing areas not heretofore within any district, the electors will be those stockmen who, prior to the establishment of the district, were regularly accustomed to using the Federal range within said district. A minor may vote if otherwise qualified, Provided, That upon request by his natural or legal guardian his ballot may be cast by the guardian in the name of the minor. The judges at any election will be furnished by the representative of the Bureau of Land Management in charge with a list of all electors entitled to vote in the district. No one whose name does not appear on such list shall be allowed to vote, Provided, That anyone claiming that his name has been erroneously omitted from the list may obtain and mark a ballot which will be held uncounted until the range manager shall have had a further opportunity to determine whether or not the party was entitled to vote. If it is found that the party was entitled to vote, his ballot shall be counted, otherwise it shall be disregarded.

(d) Elections; judges; nominations; ballots; registration; challenges. The representative of the Bureau of Land Management in charge of an election will choose three qualified electors to act as election judges. The electors present may then place in nomination the names of the candidates, Provided, That nominations for the representative of a given precinct must be made by one qualified to represent such precinct, but ballots may be cast for any other person qualified to represent a particular class or precinct. Voting shall be only by ballots cast personally by qualified electors and proxies will not be recognized. No elector shall receive a ballot until he has registered by signing opposite his name on the list of persons entitled to vote. Before receiving a ballot any elector may be challenged by any other elector qualified to vote in the district and thereupon the judges, or any of them, may require the elector challenged to answer such questions concerning his qualifications as a voter as may be deemed necessary. Upon his failure or refusal to answer such questions satisfactorily, he shall not be permitted to register or to receive a ballot. Each candidate may designate any qualified elector to remain within the polling places during the casting and counting of votes and the declaration of the results thereof, and such person may act as a challenger. Before any elector shall be permitted to deposit his completed ballot in the ballot box, the judges shall write "Voted" opposite his signature on the registration list.

(e) Elections; method of voting. Only one ballot may be cast by the holder or holders of any one license or permit, whether regular or free-use, or by a qualified elector or electors controlling any one base property. An elector eligible only for a free-use license or permit may cast a ballot for one free-use candidate only and for no other candidate. All other electors, regardless of the precincts in which they may reside or operate, shall cast one ballot each, on which shall be written the name or names of the total number of candidates to be elected in the district as representatives of the class of owners of livestock to which the elector belongs, Provided, That if he belongs to more than one such class he shall vote only for the candidates of the class in which he predominates in numbers of livestock, on the basis of one cow or horse being the equivalent of five sheep or goats. If a certain number are to be elected from each precinct, no ballot shall include the names of more candidates from any one precinct than are to be elected therefrom.

(f) Elections; close of polls; results; ties; judges' certificate. Polling places shall remain open on the day of the election from 2 p.m. to 5 p.m., or until those present at 5 p.m. shall have voted. Upon the closing of the polls the judges shall open the ballot box and count the votes. In case of a tie vote, a choice by lot shall be made by the judges in the presence of the tie candidates or of at least one representative designated by each such candidate for such purpose. As soon as the ballots have been counted, the judges shall make out a certificate of returns under their hands, stating the number of votes cast, the number of excess, unused or spoiled ballots, and, in both words and figures, the number of votes received by each candidate. The certificate, together with the ballots and the registration list of voters, shall be enclosed and sealed and forthwith delivered to the representative of the Bureau of Land Management in charge of the election.

(g) Appointment by Secretary of the Interior; Oath and Term of Office; Removal; Vacancies. No person elected as a district adviser may assume office until he has been appointed by the Secretary of the Interior and has taken an oath of office. Persons elected as district advisers at the first election after the establishment of a grazing district shall be divided as evenly as may be into three classes by lot by the range manager. Those in class 1 shall hold office for one year, those in class 2 for two years, and those in class 3 for three years, and until their successors are elected and have qualified. Thereafter at each election the class whose term has expired shall be elected for a term of three years. The Secretary of the Interior may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or for the good of the service. Upon a vacancy occurring in the office of a district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the regional administrator, shall be transmitted to the Director, who shall consider the recommendation and, if he concurs, transmit it to the Secretary for his consideration. A person appointed by the Secretary to fill a vacancy shall hold office until the next regular election, when a successor shall be elected to serve for the remainder of the unexpired term, if any, of the member causing the vacancy. Wildlife representatives shall hold office for a term of three years and until a successor is appointed by the Secretary.

(h) Meetings; Organization. District advisory boards shall meet at any time and place within or near the district designated by the regional administrator or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the representative of the Bureau of Land Management present, it may meet in executive session in considering applications for the granting of licenses or permits or any other business.

(i) Functions and duties of district advisers. District advisers shall advise or make recommendations on the following matters:

(1) The carrying capacity of the Federal range in the district.

(2) Applications under the Federal Range Code for Grazing Districts, for grazing licenses or permits, either regular or free-use, Provided, That no board shall make a recommendation on an application by any of its members. Such an application shall be acted on in the first instance by the range manager.

(3) Proper rules of fair range practice.

(4) Allotments of range by classes of livestock or for community or individual use.

(5) Seasonal use of the Federal range or any part thereof.

(6) Applications for the construction or maintenance of improvements on the Federal range under section 4 of the act.

(7) Any recommendations made by local associations of stockmen in the district.

(8) Reservations of carrying capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(9) Special rules for the district, within the meaning of 161.15.

(10) Any other matter which they may desire to bring to the attention of the Secretary of the Interior, or on which he may request their advice. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)(July 14, 1939, 53 Stat. 1002; 43 U.S.C. 315o-1)

(j) State Advisory Boards. Each grazing district advisory board shall select from its members, at the first meeting of the board after an election, two members and two alternates to serve on a State Advisory Board for the State in which the district is located, Provided, That where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected.

(k) National Advisory Board Council. Each State Advisory Board shall select from its members, at its first meeting after its membership is designated or changed, one representative and one alternate representing cattle and horses, and one representative and one alternate representing sheep and goats, to serve on a National Advisory Board Council.

(l) Functions and duties of State Advisory Boards and National Advisory Board Council. In addition to the service rendered on grazing district advisory boards, the State Advisory Board members shall consider and make recommendations on grazing administration policies or problems affecting the State as a whole. The National Advisory Board councilmen, in addition to serving on their respective district and State Advisory Boards, shall consider and make recommendations on grazing administration policies and problems of national scope (48 Stat. 1269; 49 Stat. 1976, 43 U.S.C. 315 et seq.).

161.13 Local associations of stockmen.

(a) Organization. Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

(b) Articles of incorporation; constitutions; by-laws. Such associations shall be organized as corporations "not-for-profit," if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the Director of the Bureau of Land Management before the organization of the association shall be recognized by the Department of the Interior. The by-laws of such associations need not be submitted but in any instance in which they are in conflict with the provisions of the Federal Range Code for Grazing Districts or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

(c) Powers. Such local associations should be authorized to exercise the following powers:

(1) To lease, or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

(2) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(3) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district, under permit issued by authority of the Secretary of the Interior.

(4) To act in an advisory capacity to the Secretary of the Interior in the administration of the Federal range lying within the district. All recommendations made by the association to the Secretary shall be subject to the provisions of the Federal Range Code for Grazing Districts and shall include the right of a hearing before an examiner of the Bureau of Land Management on the necessity and propriety of any action recommended and of appeal to the Secretary from the examiner's findings of fact and decision.

(5) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes contemplated by the act.

(6) To enter into cooperative agreement with the Secretary of the Interior or any officer designated by him for any of the foregoing purposes or for any other purpose authorized by the act.

(d) Cooperative agreements for use of lands; obligation of all licensees and permittees to share cost. Whenever the carrying capacity of Federal range is increased by reason of the acquisition of control of any lands by the Bureau of Land Management through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands, based on the number of livestock by which his license or permit is increased by reason of the administration of the association lands by the Bureau of Land Management, plus any authorized association assessments for other expenses. The range manager is authorized to refuse to issue a license or permit to any applicant or to cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such an agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges. (Sec. 9, 48 Stat. 1273; 43 U.S.C. 315h)

161.14 Construction and maintenance of improvements on the Federal Range.

(a) Statutory authorization. Section 4 of the act provides:

> "Fences, wells, reservoirs, and other improvements necessary to the care and management of the permitted livestock may be constructed on the public lands within such grazing districts under permit issued by the authority of the Secretary, or under such cooperative arrangement as the Secretary may approve. Permittees shall be required by the Secretary of the Interior to comply with the provisions of law of the State within which the grazing district is located with respect to the cost and maintenance of partition fences. No permit shall be issued which shall entitle the permittee to the use of such improvements constructed and owned by a prior occupant until the applicant has paid to such prior occupant the reasonable value of such improvements to be determined under rules and regulations of the Secretary of the Interior. The decision of the Secretary in such cases is to be final and conclusive."

(b) Applicants for permits and cooperative agreements; qualifications. An applicant for a permit or for a cooperative agreement or an arrangement to construct and maintain improvements of the character described in section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must satisfy the qualifications defined in 161.3(a).

(c) Applications; form and contents; filing. Applications for such permits, cooperative agreements, or arrangements shall set forth the location of such improvements by legal subdivision of the public land survey, the necessity, use, cost, and description of such improvements, item by item, shall designate the time and manner of their construction, the period of use, the method of operation, protection, repair, removal, or other disposition, and shall include any other pertinent information. If an application concerns the use and maintenance of improvements constructed and owned by a prior occupant under permit issued by the authority of the Secretary, it shall include also an itemized showing of their reasonable value at the time of filing the application and other evidence that the applicant has paid this amount to the prior occupant and has obtained title to the improvements free of all encumbrances, or a clear and concise explanation of the reasons for a lack of such agreement between the applicant and the prior occupant. When necessary properly to explain the improvements and matters connected therewith, the application shall be accompanied by a sketch of the improvements with specifications and a map showing their location in the grazing district. All applications shall be made on forms provided by the Bureau of Land Management, with such modifications as may be necessary, and shall be filed in triplicate with the range manager, who will submit them to the advisory board for consideration and recommendation prior to transmittal to the regional administrator for action.

(d) Applications for construction of improvements; consideration; appeals. The regional administrator, following the receipt of an application concerning the construction of an improvement, together with the recommendation of the advisory board and range manager, will act on the application and such action shall be final unless the applicant appeals to an examiner. Appeals to an examiner and to the Director of the Bureau of Land Management and Secretary of the Interior shall be made in accordance with section 161.9(c) and sections 161.9(e) through 161.9(n). Decisions not appealed from, and, in any event, the decision of the Secretary shall be final.

(e) Applications for use of improvements owned by prior occupant; procedure upon failure to agree. An application to use and maintain improvements constructed and owned by a prior occupant, under permit issued by the authority of the Secretary, if accompanied by the by the evidence of ownership provided for in paragraph (c) of this section, shall be considered in the same manner as an application for the construction of improvements. Upon the filing of such an application showing that the applicant and the prior occupant have not agreed on the value of the improvements, the regional administrator will immediately, at the applicant's expense, cause the prior occupant to be served either personally or by registered mail with a notice of the filing of the application, together with copies of the application and any accompanying papers and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or, if the prior occupant applies within thirty days from the date of service for a hearing, in the light of such evidence as the applicant and the prior occupant may desire to present in such hearing, the regional administrator will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken to an examiner. Appeals to an examiner and to the Director of the Bureau of Land Management and to the Secretary of the Interior shall be made in accordance with section 161.9(c) and (e) through (n). Decisions not appealed from and, in any event, the decision of the Secretary shall be final. Upon the failure of the prior occupant to show cause or to apply within thirty days for a hearing, the reasonable value of the improvements will be determined by the regional administrator: Provided, That in the event of such default by the prior occupant the value determined shall not be less than the amount alleged by the applicant in his application and the decision of the regional administrator in such cases shall be final. In any case when a decision has become final, payment by the applicant to the prior occupant of the amount determined and a showing that the improvements are free of all encumbrances shall be a condition precedent to favorable action on the application.

(f) Approval of application. Upon the approval of an application concerning the construction or use and maintenance of any improvements on the Federal range by the issuance of a permit or the approval of a cooperative agreement or other arrangement, the applicant may construct the improvements or use the improvements constructed and owned by the prior occupant, as the case may be. (Sec. 4, 48 Stat. 1271; 43 U.S.C. 315c)

161.15 Special rules for grazing districts. Whenever it appears to a regional administrator that local conditions in any district in his region make necessary the application of a special rule on any of the matters in the Federal Range Code for Grazing Districts in order better to achieve an administration consistent with the purposes of the act, he may recommend such a rule, supported by a factual showing of its necessity, to the Secretary of the Interior for approval. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.16 Penal provision. Under section 2 of the act any willful violation of the provisions of the act or of the rules and regulations thereunder (the Federal Range Code for Grazing Districts), after actual notice of the existence of the provisions of such act or such rules and regulations, is punishable by a fine of not more than $500. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.17 Saving clause. So far as practicable, and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in 161.1(a) of the Federal Range Code for Grazing Districts, the provisions of 161.6(b) of the Code will not be applied to the prejudice of the position of anyone who on September 23, 1942, was the holder of a grazing license or permit or who on that date had pending an application therefor. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

Circular No. 2313

GRAZING REGULATIONS FOR THE PUBLIC LANDS

U. S. DEPARTMENT OF THE INTERIOR
Rogers C. B. Morton, *Secretary*

BUREAU OF LAND MANAGEMENT
Burton W. Silcock, *Director*

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PREFACE

The regulations contained herein are applicable to the management and use of 175,000,000 acres of public land administered under the authority and provisions of the Taylor Grazing Act of June 28, 1934, and the O&C Act of August 28, 1937, as amended and supplemented.

Part 4110, Grazing Administration (Inside Grazing Districts) is applicable to the 157,000,000 acres of grazing land administered by the Bureau of Land Management's 52 grazing districts. It provides the regulations pursuant to Section 3 of the Taylor Grazing Act for management of the public lands.

Part 4120, Grazing Administration (Outside Grazing Districts and exclusive of Alaska), provides regulations (pursuant to Section 15 of the Taylor Grazing Act and Section 4 of the O&C Act) for the use and management of the 18,000,000 acres of leased lands that have not been included within grazing districts.

Subpart 9239, Trespass - Grazing, provides grazing trespass regulations, including disciplinary actions resulting from the commitment of acts prohibited and violation of the rules of fair range practice.

Subparts 1840 and 1850, Appeals and Hearings procedures, have been recodified under Part 4 of this Title and are not included in this publication. Appeals and Hearings procedures under Part 4 which are applicable to all Bureau of Land Management operations will be issued as a separate circular.

This publication is a consolidation of the primary regulations used in the management of the public lands administered pursuant to the Taylor Grazing Act both inside and outside the statutory grazing districts and is intended to facilitate BLM operations.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—RANGE MANAGEMENT (4000)

Group 4100—Grazing Administration

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

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Subpart 4110—Grazing Administration (Inside Grazing Districts); General

§ 4110.0–2 Objectives.

Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promote the highest use of the public lands within grazing districts which have been or hereafter are established, possession or control of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the Federal range will be required of all users.

§ 4110.0–3 Authority.

(a) *Saving clause.* So far as practicable and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in § 4110.0–2, the provisions of this Subpart 4110 will not be applied to the prejudice of the position of anyone who on the date of approval of this part was the holder of a grazing license or permit or who on that date had pending an application therefor.

§ 4110.0-5 Definitions.

Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management in or pursuant to the Federal Range Code for Grazing Districts (this part), unless the context otherwise requires:

(a) The "act" means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315, 315a–315r), as amended and supplemented.

(b) "The Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) The "Secretary" means the Secretary of the Interior or his authorized agent.

(d) "Board of Land Appeals" means the Board in the Office of Hearings and Appeals, Office of the Secretary, authorized to decide finally for the Department appeals to the Secretary arising under this part.

(e) The "Director" means the Director of the Bureau of Land Management or his authorized agent.

(f) "State Director" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(g) "District manager" means the supervising Bureau of Land Management officer of the grazing district in which the particular range lies, or his auhorized agent.

(h) "Federal range" means land within established grazing districts administered by the Bureau of Land Management under the Federal Range Code for Grazing Districts (this part), including the vacant, unappropriated, and unreserved public land of the United States chiefly valuable for grazing and forage crops; State, county, and privately owned land leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land.

(i) "Property" means privately owned or controlled land or water used in range livestock operations.

(j) "Base property" means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(k) "Base property qualifications" means the maximum amount of grazing privileges on Federal range properly allowable to base properties in class 1 or class 2.

(l) "Forage land" means land the principal use of which is the production of natural or cultivated feed for livestock.

(m)(1) "Land dependent by use" means forage land other than Federal range of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the "priority period", was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years of such priority period in connection with substantially the same part of the public domain, now part of the Federal range. Such land may be (i) parallel land, i.e., land of the same character, interspersed with, and grazed at the same time as the Federal range on which grazing privileges may be granted, except in those grazing districts which by special rule have excluded parallel land as base property, (ii) land of different character than the Federal range and which properly supports the permitted livestock during all or part of the period that the Federal range is closed to grazing, or (iii) a combination of these two types of land. The priority period shall be the five-year period immediately preceding June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) No land shall be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year after the date when the Federal range used in creating the dependency by use first became a part of a grazing district, except that if the Federal range used in creating the dependency by use became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date. Only the last set of base properties used during the priority period by a livestock operation can be invested with dependency by use by such operation.

(3) The extent to which grazing licenses or permits will be granted on the basis of dependency by use of land, shall be governed by the following:

(i) It shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of any two consecutive years or any three years in which use was actually made during the priority period, whichever is more favorable to the applicant, on that part of the public land which, at the time of the issuance of the license or permit, is Federal range.

(ii) It shall not exceed the amount of forage needed for the number of livestock creating such dependency by use that were customarily and properly sustained on the base property during the priority period and continue to use such property to the same extent, except that in no instance shall the use of base property be for less than the minimum period established under § 4111.2–1. The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that necessary for the proper support of the number of livestock used in creating the dependency by use (class 1) the base property, to the extent of such excess forage capacity, may be treated as dependent by location (class 2) if so qualified.

(iii) Whenever the dependency by use of two or more base properties was created by the use of all or part of the same Federal range, during the same or at different seasons of the year, by two or more livestock operations, the relative dependency by use of each of the base properties shall be proportionate to the average annual use actually and properly made of the Federal range during the priority period by each of the livestock operations.

(n) "Land dependent by location means forage land other than Federal range, which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(o) "Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by the grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under § 4115.2–1(k)(2), the charge for one horse grazing on the Federal range for one month shall be at twice the rate charged for one cow grazing for the same period.

(p) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(q) "Full-time water" means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(r) (1) "Prior water" is water which, during all or not less than two years of the priority period was used to service certain public domain now part of the Federal range for a livestock operation that was established, permanent, and continuing, and which normally involved the grazing of livestock on the same areas of public land for a certain portion or portions of the years of such use. For the purpose of this definition the priority period shall be the five-year period immediately preceding June 28, 1934, except that in any area placed within a grazing district or added to an existing district by boundary modification after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) Where a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, have served to invest such water with the attribute of priority, but such livestock operation subsequently ceased using such water or waters and used other water or waters in such manner as to invest them, too, with priority, only the latter water or waters shall be considered as prior, unless the former are also prior because of use by another livestock operation.

(3) No water shall be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district except that when such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

(4) The extent to which grazing privileges will be granted on the basis of the priority of water shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of the years in which use was actually made during the priority period, on substantially that part of the public lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(s) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

(t) "Adjudication of grazing privileges" is the determination of the qualifications for grazing privileges of the base properties, land (paragraph (m)(1) of this section) or water (paragraph (r)(1) of this section) offered in support of applications for grazing licenses or permits in a range unit or area, and the subsequent equitable apportionment among the applicants of the forage production within the proper grazing season and capacity of the particular unit or area of Federal range, and acceptance by the applicants of the grazing privileges based upon the apportionment or its substantiation in a decision by an examiner or the Board of Land Appeals upon appeal. (Applicable provisions are Subpart 4111 and § 4115.2–3.)

(u) "Allotment management plan" means a program of action designed to reach specific management goals.

(v) "Grazing system" means a specific sequence of livestock grazing by designated area to accomplish management objectives.

Subpart 4111—Awards of Grazing Privileges

§ 4111.1 Qualifications of applicants.

§ 4111.1–1 Qualifications.

An applicant for a grazing license or permit is qualified if:

(a) He is engaged in the livestock business and is a citizen of the United States or has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen or a valid petition for naturalization, or:

(b) It is a group, or association authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, all the members of which are qualified under paragraph (a) of this section; provided that the agreement or articles of association under which the association has been formed are approved by the State Director, or:

(c) It is a corporation, the controlling interest in which is vested in persons qualified under paragraph (a) of this section and which is authorized to do business under the laws of the State in which grazing privileges sought are to be exercised; provided that the articles of incorporation have been approved by the State Director.

§ 4111.1–2 Effect of transfer arising through operation of law.

The acquisition of rights in base property by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, based on such property, for a period of two years after such acquisition. Upon the failure of such person to qualify within the two year period the license or permit will be subject to cancellation in accordance with § 4115.2–1(d).

§ 4111.2 Base property qualifications and classification.

§ 4111.2–1 Minimum requirements: classification of base properties.

(a) The District Manager, after recommendation by the advisory board, shall establish minimum base property requirements as a condition of qualification for the issuance of a license or permit in each district or unit thereof, taking into consideration the availability of base properties for proper use with and their relative dependence upon Federal range, land and water conditions, and other factors affecting livestock operations in the area according to customary use and best practices for good range management.

(b) The District Manager after recommendation by the advisory board will classify base properties as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

§ 4111.3 Adjudication and apportionment of grazing privileges.

§ 4111.3–1 Mandatory requirements; rating and classification of Federal Range.

(a) *Grazing capacity; seasons and maximum annual period of use.* The District Manager, after recommendation by the advisory board, will rate the grazing capacity of each unit or area in a grazing district and will classify each for the proper seasons of use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range therein during any one year.

(b) *Wildlife; allowance for maintenance.* In each grazing district a sufficient grazing capacity of Federal range suitable for wildlife will be reserved by the District Manager after consulting with wildlife interests and the advisory board, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *Preference applicants.* Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in a livestock business, bona fide occupants or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner specified in paragraph (d) of this section. Provision will be made for other applicants so far as Federal range remains available.

(d) *Order of preference.* Licenses or permits will be issued in the following order:

(1) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(2) *Regular licenses and permits; number of livestock.* Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

§ 4111.3–2 Procedures.

(a) *Unit-wide or area-wide adjudication.* (1) The District Manager, after recommendation by the advisory board, may make a simultaneous classification under § 4111.2–1 of all offered base properties within a single administrative unit or grazing area and may allocate in a single action the available Federal range within the unit or area upon which such base properties are dependent.

(2) The District Manager shall give written notice by certified mail of such classification and allocation to the persons offering such base properties, naming a place and date not less than 30 days thereafter to file protest to the advisory board, in accordance with § 4115.2–1(b). Thereafter, and provided there is then pending a valid application for grazing privileges, the District Manager will render his final decision thereon and will allow the right of appeal to the examiner in accordance with § 4115.2–3.

(b) *Permits; annual licenses.* Grazing permits may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing; a recommendation thereon made by the advisory board, and approval thereof given by the District Manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the grazing regulations for grazing districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. The practice of issuing an annual license will be continued until such time as a permit is issued. Upon the issuance of a permit any outstanding license or part thereof which has been granted on the same qualifications on which the permit is based will terminate. Upon expiration of a term permit an annual license may be issued, pending issuance of a new term permit.

(c) *Allotments.* Allotments of Federal range will be made to licensees or permittees when conditions warrant. Division of the range by agreement or former practice will be followed where practicable, provided such division is in substantial conformity with the qualifications for grazing privileges of the respective applicants and the agreement is reduced to writing and approved by the District Manager.

(d) *Administration of lands additionally available; preference right for lands restored from withdrawal.* (1) Any land within the exterior boundaries of a grazing district made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315M–1—315M–4), by the revocation of a withdrawal, or by the cancellation or relinquishment of a homestead entry or claim, or otherwise, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management.

(2) Where public lands are restored from withdrawal and the District Manager determines that the lands are available for grazing use, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to their restoration, shall have a superior preference to the further grazing use of such lands. The preference right must be asserted and an application for license or permit, on a form approved by the Director obtainable from the District Manager must be filed with that officer not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The District Manager may issue to such applicant an annual license or a term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act. 43 U.S.C., 1952 ed., sec. 315(h).)

§ 4111.4 Adjustments of grazing privileges.

§ 4111.4–2 Increases.

Increases in grazing capacity, when conditions warrant, and after recommendation of the advisory board and approval of the District Manager, will be apportioned in a manner that will assist in the stabilization of livestock operations controlling qualified base property, with emphasis being given to the restoration of reductions that have been imposed to reach the grazing capacity of a particular allotment or range area, and to allocation of increased grazing capacity to operators or interests whose efforts were responsible for such increases.

§ 4111.4–3 Reductions.

(a) Downward adjustments will be imposed in the following order:

(1) Nonrenewable licenses.

(2) Regular licenses or permits to the extent, if any, to which they have been issued in excess of the base property qualifications or have otherwise been improperly issued.

(3) Regular licenses or permits properly issued, on an equal percentage basis.

(b) Base property qualifications will be adjusted, after licenses or permits have been issued, to the extent that such base property qualifications exceed the long-term forage production potential of any area of Federal range. Adjustments required below the forage production potential of any area of Federal range, after licenses or permits have been issued, to balance authorized use with the proper stocking rate of the Federal range, will be apportioned equitably or as agreed to among the qualified licensees or permittees and the District Manager after recommendation by the district advisory board. Such adjustments may be made either by authorizing less livestock or less time or by both methods as determined by the District Manager.

(c) When the District Manager determines that the forage production potential, with improvements, of the Federal range area is significantly greater than the present allowable stocking rate, he will issue combination active use and suspended nonuse licenses or permits for not to exceed the forage production potential, except that at his option, and after obtaining advice from the district advisory board, he may apply paragraph 2(d) of this section in making the adjustment. The difference between the forage production potential and the present allowable stocking rate of the Federal range area will be held in a suspense status, provided that the aggregate of authorized active use and "suspended nonuse" shall not exceed the base property qualifications of any licensee or permittee.

(d) When the District Manager, after recommendation by the district advisory board, determines that the imposition of the full amount of downward adjustment in authorized active use necessary to reach the proper stocking rate of a Federal range area would impose a serious hardship on the range users, he is not required to impose the full amount of the adjustment forthwith, but will schedule a percentage of the required adjustment during each of the three years immediately following the District Manager's determination as the circumstances in each case may warrant, except that when the total adjustment is less than 15 percent of the total authorized active use, it will be imposed forthwith in the full amount.

(e) The District Manager will notify each affected licensee or permittee by certified mail of his decision to make an adjustment in authorized active use to reach the proper stocking rate of any Federal range area and of the manner in which the adjustment is to be made. The District Manager's decision will allow 30 days from receipt thereof in which the licensee or permittee may file an appeal in accordance with § 4115.2–3 and § 1853.1 of this chapter. If no appeal is filed within the 30-day period, the adjustment will be in accordance with the District Manager's decision and no further appeal will be allowed even though the adjustment may be scheduled under paragraph 2(d) of this section. If any timely appeal is filed, after receipt of the District Manager's decision notice, the adjustment for the entire area of Federal range under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the ultimate decision will be applied to its full extent for the next grazing season immediately following the effective date of that decision. If, however, the final decision on the appeal is rendered within the 3-year adjustment period established by the District Manager's decision notice, the required adjustment may be apportioned over the remaining portion of that period. In the event that the orderly administration of the Federal range or other public interest so requires, any decision may be placed in full force and effect in accordance with the provisions of §1853.8(b) of this chapter.

(f) Federal range lands to be used under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of a pending or proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with Parts 2450 and 2460 of this chapter, and subject to the right of protest and to the exercise of administrative review by the Secretary as may be provided in such notice and in Group 2400 of this chapter.

Subpart 4112—Management Practices

§ 4112.2 Designation of ranges for particular kinds of livestock.

The District Manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the Federal range.

§ 4112.3 General rules of the range.

§ 4112.3–1 Acts prohibited.

The following acts are prohibited on the Federal range:

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(b) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(c) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(d) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(e) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the District Manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(f) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(g) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

§ 4112.3–2 Rules of fair range practice.

All licensees and permittees shall comply with the following rules of fair range practice:

(a) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating to the branding of livestock and sanitary requirements shall be followed.

(b) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the District Manager.

(c) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the District Manager. Upon request by the majority of the users of any community allotment of Federal range, the District Manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

(d) When so requested by the State Director or District Manager, the licensee or permittee shall join with the Bureau of Land Management in preparing a fire plan which shall set forth in detail the program for prevention, control, and extinguishment of fires, including the responsibility of the licensee or permittee for action on his range allotment and on adjacent Federal range.

Subpart 4113—Supervision and Inspection

§ 4113.1 Procedure for enforcement of rules and regulations.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule. (Refer to § 9239.3–2 of this chapter for detailed enforcement procedures.)

Subpart 4114—Advisory Boards and Local Associations

§ 4114.1 Grazing district advisory boards.

§ 4114.1–1 Authorization for establishment; number of members; qualifications.

The State Director shall fix the number of members to be recommended by election for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be recommended by election, but shall be selected directly by the State Director. The State Director may fix the number of district advisers to be recommended by election as representatives of each class of stockman, according to the kind of livestock owned, or may fix the number to be recommended by election from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to recommend one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

§ 4114.1–2 Election, time and place; the general procedures.

All district advisers, except wildlife representatives, shall be recommended by election in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management, and published in the FEDERAL REGISTER. An election to recommend district advisers for appointments for each grazing district will be held within 90 days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons recommended by election for appointment at the first election after establishment of a grazing district, or at the first election during the 1964 calendar year, may be recommended for appointment and annual reappointment for a maximum period of three consecutive years; or the District Manager may divide the group, by lot, as evenly as possible into three groups to be considered as being recommended for appointment or reappointment for one year, two consecutive years, or three consecutive years respectively. Thereafter, elections will be held annually, for each group whose term of recommendation for appointment has expired, in accordance with the options set forth in the General Procedures for Grazing District Advisory Board Elections.

§ 4114.1–3 Appointment; term of office; removal; vacancies.

A person recommended by election for appointment as district adviser shall assume office only after he has been appointed by the State Director and has taken the oath of office. The State Director may, in his discretion, appoint those in group 1 for a period not to exceed 365 days; those in group 2 for an initial period of 365 days and thereafter a subsequent like period; and those in group three for an initial period of 365 days and thereafter two successive like periods. The State Director may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of the district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the District Manager, shall be transmitted to the State Director for consideration. A person selected to fill a vacancy shall be appointed for the remainder of the unexpired 365-day period, after which a person shall be recommended by election for the balance of the period of recommendation at the next regular election. The wildlife representative will be appointed by the State Director for a term of office that does not exceed 365 days.

§ 4114.1–4 Meetings; organization.

District advisory boards shall meet at any time and place within or near the district designated by the State Director or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licenses or permits or any other business.

§ 4114.1–5 Functions and duties of district advisers; limitations.

District advisers shall advise or make recommendations on the following matters:

(a) The qualifications, classification, and requirements of base property.

(b) The transfer and relinquishment of base property qualifications.

(c) The grazing capacity of the Federal range in the district.

(d) Application for all types of grazing licenses or permits, including nonuse, or extension of use: *Provided*, That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(e) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(f) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of this part.

(g) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(h) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(i) Proper rules of fair range practice.

(j) Allotments of range by classes of livestock or for community or individual use.

(k) Seasonal use of the Federal range or any part thereof.

(l) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(m) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(n) Any recommendations made by local associations of stockmen in the district.

(o) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(p) Special rules for the district, within meaning of § 4115.2–4.

(q) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

§ 4114.2 State advisory boards.

§ 4114.2–1 Membership and meetings.

The livestock members of each grazing district advisory board shall select from their number at the first meeting of the board after each election, two members and two alternates to serve on a State advisory board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State will select one of their number and one alternate to serve as a wildlife member on the State advisory board. In addition, the State advisory board will have one or more additional members, but not exceeding seven, who will represent other interests such as forestry, minerals, soil conservation, outdoor recreation, urban and suburban development, county government, and State government. Such additional members and their alternates will be selected by the State Director from nominations made by State or local government officers or organizations reflecting nonlivestock interests in the management or disposition of public lands. The time and place for meetings of the State advisory board shall be set by the State Director. The board shall select from its members one member to be chairman of the board. The co-chairman of the board shall be the State Director.

§ 4114.2–2 Functions and duties.

The State advisory boards shall consider and make recommendations on grazing, wildlife, forestry, outdoor recreation, minerals, soil conservation, urban and suburban development, and other resource administration policies or problems affecting the State as a whole. The operations of the State boards, including their meetings shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.3 National Advisory Board Council.

§ 4114.3–1 Membership and meetings.

The livestock members of each State advisory board shall select from their number, at its first meeting of each new term, one member and one alternate representing cattle and horses, and one member and one alternate representing sheep and goats, to serve on the National Advisory Board Council. The elected wildlife member or his alternate on each State advisory board will serve on the National Advisory Board Council representing wildlife interests. The State Director from each of the ten Western States with organized grazing districts shall submit a list of nominees, selected from the nonlivestock and nonwildlife membership on the State board. From this list, and other sources as he may determine, the Secretary of the Interior or his authorized representative shall appoint members, not exceeding ten in number, to the National Advisory Board Council to represent nonlivestock and nonwildlife interests. In addition to the above membership, one member from each of the States of Alaska and Washington will be appointed by the Secretary of the Interior or his authorized representative from a list submitted by the respective State Directors pursuant to nominations made by State or local government officers or organizations reflecting interests in grazing or other uses of public lands. The Council shall select from its members one member to be chairman of the Council. The co-chairman of the Council shall be an official of the Department of the Interior appointed by the Secretary of the Interior who shall set the time and place for such meetings of the National Advisory Board Council.

§ 4114.3–2 Functions and duties.

The National Advisory Board Council shall consider and make recommendations on policies and problems of a national scope related to all natural resource use and management. The operations of the National Council, including their meetings, shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.4 Local associations of stockmen.

§ 4114.4–1 Organization.

Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

§ 4114.4–2 Articles of incorporation; constitutions; by-laws.

Such associations shall be organized as corporations "not-for-profit", if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Director for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance which they are in conflict with the provisions of this part or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

§ 4114.4–3 Powers.

Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(a) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(b) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district under permit issued by the Bureau.

(c) To act in an advisory capacity in the administration of the Federal range lying within the district.

(d) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes, contemplated by the act.

(e) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

§ 4114.4–4 Cooperative agreements for use of lands; obligation of licensees and permittees to share cost.

Whenever the grazing capacity on Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the District Manager after consideration of the recommendation of the association. The District Manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

Subpart 4115—Records and Administrative Procedures

§ 4115.2 Procedures.

§ 4115.2–1 License and permit procedures; requirements and conditions.

(a) *Filing and consideration of applications; interdistrict agreements; recommendations; service of notice.* (1) Each year a date will be set by the District Manager prior to which all applications for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) All applications for grazing licenses or permits will first be presented to the district advisory board for advice and recommendation: *Provided,* That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(3) Where a grazing area or unit is located in one district, but is administered by the District Manager of an adjacent district pursuant to a formal interdistrict agreement, applications for grazing licenses or permits on such area or unit shall be filed with the District Manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the District Manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the District Manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable and the District Manager approves, he will notify the applicant by ordinary mail, which notice may be the fee billing. If the advisory board recommendation is favorable but the District Manager disagrees, notice will be served on the applicant in person or by certified mail sent to his address of record, setting forth the recommendation of the advisory board and the Manager's disapproval, together with the reason or reasons for a prospective adverse decision, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a date, not less than ten days thereafter, on or before which oral or written protest may be presented to the District Manager. If the recommendation of the board is to any extent adverse, notice will be served on the applicant in person or by certified mail sent to his address of record, setting out the reason or reasons given by the advisory board for the adverse recommendation, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a place and date, not less than ten days thereafter, when protest against the recommendation will be heard. The District Manager may also serve notice on any other applicant or applicants who may be directly affected by the adoption of the advisory board recommendation or the prospective decision of the Manager which will allow an appropriate protest. In any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may recommend that a protest meeting not be held, whereupon the District Manager may accept the recommendation of the board as its final consideration.

(b) *Protests; reconsideration by advisory boards; service of notice.* At the time and place fixed for the protest meeting, any licensee, permittee, or applicant may appear, in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the District Manager. If such recommendation is favorable to the protestant, and the District Manager approves, he will notify the protestant thereof by ordinary mail, which notice may be the fee billing. If the recommendation is to any extent adverse, and the District Manager approves, a notice giving the reason or reasons therefor will be served on the protestant in person or by certified mail, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts that serve as controlling factors. Such notice will constitute the District Manager's final decision for purposes of appeal.

(c) *Allowance or rejection of application; modification; service of notice.* The District Manager, in the light of all facts and circumstances and after reference to the advisory board, may issue or refuse to issue a grazing license or permit. When the District Manager takes an adverse action on any application, a notice including a recital of the specific reasons for the action taken will be served on the applicant in person or by certified mail. The notice will advise the applicant of his privilege to appeal to an examiner.

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of §§ 4111.1, 4115.2–1(e), 4115.2–1(k)(4), 4114.4–4 or 4115.2–5(a)(6). Except as otherwise specifically provided, in any such case or in any case in which it shall appear that a license or permit confers grazing privileges in excess of those properly allowable under this part, the District Manager will notify the licensee or permittee that the license or permit is thereby held for cancellation or reduction either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such action should not be made final. Such notice will set forth fully the reasons for the proposed action, specifically referring to the pertinent provisions of this part, and will be served on the licensee or permittee by certified mail or in person. In case of failure of the licensee or permittee to show cause within the time allowed, the license or permit will be canceled or reduced to the extent indicated in the notice. The District Manager will consider any cause shown and, if satisfied of its sufficiency, will close the case; if not satisfied as to its sufficiency, or if no cause is shown, he will notify the licensee or permittee in person or by certified mail that the cancellation or reduction will become final unless an appeal to the examiner is filed in accordance with § 4115.2–3.

(e) *Terms and conditions.* The issuance and continued effectiveness of all regular licenses and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation.

(2) No license or permit will provide for the grazing livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the grazing capacity of the Federal range to be used, as determined by the District Manager, except as may be allowed under § 4111.4–2 (c) and (d).

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(6) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately to the reduction in available grazing capacity caused by the loss of such Federal range.

(7) If a licensee or permittee for two consecutive years ceases to make substantial use of his base property in connection with his year-round livestock operation, the authorized use under such license or permit and the qualifications of the base property may be subject to reduction in proportion to the diminished use of the base property.

(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the District Manager; except that, if the licensee or permittee notifies the District Manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the District Manager shall determine; or

(ii) All or part of such other lands or grazing privileges as are necessary to his year-round operation, the license or permit will be subject to reduction in proportion to the loss of such necessary lands or grazing privileges unless the licensee or permittee notifies the District Manager within 30 days after such loss and thereafter within the time allowed by the District Manager after recommendation by the advisory board acquires ownership or control of other lands or grazing privileges sufficient to assure a year-round operation.

(9) Base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To include in an application for a license or permit or renewal thereof, the entire base property qualifications for active, nonuse, or combination of active and nonuse, except where the base property qualifications are included in an outstanding current term permit, or where the allowable use has been reduced under §§ 4111.4–3 (a)(3) and (c), and 9239.3–2(e) of this chapter.

(ii) To accept a license or permit issued pursuant to such application.

(10) The failure for any two consecutive years to make substantial use as determined by the District Manager, after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit, may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Nonuse, in whole or in part, of grazing privileges under a license or permit may be authorized by the District Manager, upon application by the licensee or permittee, after reference to the advisory board, for the following reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit in whole or in part may result in a proportionate loss of the base property qualifications supporting such license or permit.

(13)(i) No readjudication of any license or permit, including free use license, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

(ii) The Bureau of Land Management may make adjustments in licenses and permits at any time when necessary to comply with the Federal Range Code for Grazing Districts.

(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the District Manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s), as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the District Manager.

(iii) May take necessary action to enforce the requirements under subdivisions (i) and (ii) of this subparagraph, in accordance with the provisions of paragraph (d) of this section.

(f) *Interest of Member of Congress prohibited.* No Member of or Delegate to Congress shall be admitted to any share or part of any license or permit issued under the act, or to derive any benefit to arise therefrom. (41 U.S.C. sec. 22; 18 U.S.C. secs. 431–433.)

(g) *Change in grazing season.* Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license, permit, or approved allotment management plan, may, upon a written approval of the District Manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(1) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(2) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(3) Such use will not be detrimental to the Federal range, and

(4) Such use will not adversely affect other licensees or permittees.

(h) *Exchange-of-use agreements.* Exchange-of-use agreements may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land, without payment of grazing fees, provided that during the term of the agreement the Bureau shall have the management and control of such non-Federal land for grazing purposes.

(i) *Nonrenewable licenses.* Nonrenewable licenses may be issued to nonpreference applicants only for the period specified by the District Manager and for the number of livestock for which range is temporarily available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

(j) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U.S.C. App. 511(1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the District Manager an application, in duplicate, setting fortn the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the District Manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner terminated upon further application to the District Manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for not to exceed the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, or otherwise, such temporary license shall terminate as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the District Manager on an application for suspension of a license or permit under this paragraph may be appealed by the licensee or permittee to the Board of Land Appeals, in accordance with Department Hearings and Appeals Procedures contained in Part 4 of this title.

(k) *Fees, payments and refunds*—(1) *Fees.* (i) Fees will be charged for the grazing of all livestock on public lands at a rate per animal unit month, except that no fee will be charged for a free-use license. Fees for any fee year, consisting of a grazing fee for use of the range and a range improvement fee, will be published as a notice in the FEDERAL REGISTER.

(ii) Fees will be established by the Secretary in nine equal annual increments, effective with the fee year beginning March 1, 1971, to attain the fair market value of range forage at the 1979 fee year. Fair market value is that value established by the Western Livestock Grazing Survey of 1966 or as determined by a similar study which may be conducted periodically to update the fee base, if deemed necessary. Annual adjustments may also be made for any of the 1970–79 fee years, and thereafter, to reflect current market values.

(iii) A minimum annual charge of $10 will be made on all regular licenses, permits, nonrenewable licenses, and crossing permits, except as specified in subdivision (vi) of this subparagraph.

(iv) Range improvement fees may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management and any State or Federal agency, or any person, association, corporation, or otherwise.

(v) All livestock 6 months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued, or for which an allotment management plan has been approved. No fees will be charged for livestock under 6 months of age.

(vi) Upon application filed with the District Manager, by any person showing the necessity for crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued. Charges are payable in advance at the same rate charged for regular grazing use, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

(2) *Payment of fees.* (i) No regular license or permit shall be issued or renewed until payment of all fees due the United States under these regulations have been made. Grazing privileges may be canceled or reduced, in accordance with paragraph (d) of this section, for failure to pay the required fees. Fees for regular licenses and permits are due the United States upon issuance of a fee notice and are payable in full in advance before grazing use is authorized; except that where grazing is authorized on the basis of an approved allotment management plan, which includes grazing system requirements necessary to assure proper management of the public land and its resources, the District Manager may either:

(*a*) Issue a fee notice upon termination of the grazing period authorized. The fee notice will reflect the actual grazing use made and will be payable within 30 days of the date of issuance, or

(*b*) Issue a fee notice on the basis of the normal operation detailed in the allotment management plan. Such fees are due the United States upon issuance and are payable in full in advance before grazing use is authorized. At the conclusion of the authorized grazing period the actual grazing use will be determined. A supplemental billing reflecting additional use must be paid within 30 days of issuance. A refund or credit may be made toward the following year's fees for use less than the normal operation. Ordinarily, no adjustment will be made when the amount is under $5.

(ii) Any licensee or permittee who desires a change in grazing use authorized pursuant to any of the provisions of this section must file, in advance, a written request for such change, except when in conformance with an approved allotment management plan. Upon approval of change, an adjusted billing notice will be issued.

(3) *Refunds.* No refund will be made for failure to use all grazing privileges represented by a license or permit, except that:

(i) During periods of range depletion due to severe drought or other natural causes, or in case of a general epidemic of disease during the life of a regular license or permit, fees due may be reduced in whole or in part, credited or refunded; or fee payment may be postponed for such periods so long as the emergency exists.

§ 4115.2–2 Transfers and relinquishments.

(a) *Transfer of base property; effect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if qualified under § 4111.1–1, to so much of the grazing privileges as are based thereon. Except as otherwise herein provided, the existing license or permit and the grazing privileges thereunder shall automatically and without further notice be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property; except that further grazing under the license or permit may be temporarily extended pursuant to request and notification filed in accordance with § 4115.2–1(e)(8)(i); except, also, where the transfer arises as a result of testamentary disposition the existing license or permit may continue in effect until the end of the current grazing season. Thereafter applications for renewal of a license or permit shall be filed by the heirs, devisees, executor, administrator, or personal representative, as the case may be.

(2) A transferee shall, within 90 days from the date of transfer, file with the District Manager documentary evidence of the transfer and an application on a form approved by the Director for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred. Where, however, a transfer, or a different vesting in any manner, of a leasehold interest in land or water may result in interference with the stability of livestock operations or with proper range management, upon a finding to that effect by the District Manager, after reference to the advisory board, such land or water will lose its base property qualifications and grazing privileges based thereon will be denied.

(b) *Transfer of base property qualifications; limitations; consent of owner or encumbrancer; effect.* (1) A licensee or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 4111.1–1. An application for approval of a transfer shall be filed with the District Manager on a form approved by the Director for land base or water base.

(2) Transfer of base property qualifications may be made under the following conditions:

(i) When an applicant owns or controls base land or lands having a forage production in excess of that required to support the licensed or permitted livestock, the qualifications may be concentrated on that part of the property having the forage production required by and which will continue to be used for the support of such livestock.

(ii) When such qualifications are to be transferred from land owned or controlled by the applicant, to land owned or controlled by others, the transfer will be recognized only to the extent such qualifications do not exceed the forage production of the new base property.

(iii) When an applicant owns or controls base water, the qualifications may be transferred to another adequate water source which will service the same range area.

(3) No transfer will be allowed under this paragraph if it interferes with the stability of livestock operations or proper range management, or adversely affects the local economy. No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made, except that in an application for transfer of class 1 qualifications where the applicant for such transfer is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such consent will not be required. Upon approval of the application by the District Manager after reference to the advisory board, the transfer shall be effective as of the date of filing of the application, and the base property from which the transfer is made will thereupon lose its qualifications to the extent indicated in the transfer.

(c) *Relinquishment of base property qualifications; limitation; effect.* Upon request, the district manager may accept a written relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified: *Provided,* That no such relinquishment will be accepted without the written consent of the owner or owners, if other than the applicant, and any encumbrancer of the base property, except that if the applicant is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

§ 4115.2–3 Appeals and hearings.

Any applicant whose interest is adversely affected by a final decision of the District Manager may appeal to an Examiner in accordance with § 4.470 of this title. The conduct of hearings is provided for in §§ 4.471 through 4.475 of this title. Appeals from the Examiner's decision may be made to the Board of Land Appeals pursuant to 4.476 of this title and in accordance with Department Hearings and Appeals Procedures contained in Part 4 of this title.

§ 4115.2–4 Special rules for grazing districts.

Whenever it appears to a State Director after considering the recommendation of the district advisory board that local conditions in any district make necessary the adoption of a special rule on any of the matters in this part in order better to achieve an administration consistent with the purposes of the act, he may, recommend such a rule, supported by a factual showing of its necessity, for the approval of the Director. Such rule, if approved, shall be published in the FEDERAL REGISTER.

§ 4115.2–5 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the Federal range.* (1) *Qualification of applicants for permits.* An applicant for a permit to construct or maintain improvements under section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must be qualified under § 4111.1–1.

(2) *Applications.* Applications for such permits shall be filed in triplicate with the District Manager on a form approved by the Director.

(3) *Appeals.* The District Manager will act on the application after reference to the advisory board and such action shall be final unless the applicant or any interested party appeals in accordance with § 4115.2–3.

(4) *Assignments.* Assignments of section 4 permits shall be filed with the District Manager in triplicate on the authorized form and shall not be effective until approved by the District Manager.

(5) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* Where an application shows that the applicant and the prior occupant have not agreed on the value of such improvements owned by the latter, the District Manager will promptly, at the applicant's expense, cause the prior occupant to be served either personally or by certified mail with a notice of the filing of the application, and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or if the prior occupant applies within thirty days from the date of service for an appearance before the District Manager, then in the light of such evidence as the applicant and the prior occupant may present in such appearance, the District Manager will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken in accordance with § 4115.2–3. Upon the failure of the prior occupant to show cause or to apply within thirty days for an appearance, the reasonable value of the improvements will be determined by the District Manager but shall be not less than the amount alleged by the applicant in his application, and the decision of the District Manager in such case shall be final. In any case when a decision has become final, payment by the applicant of the amount determined and a showing that the improvements are free of all encumbrances may be required prior to favorable action on the application for use of such improvements, and on any application for grazing privileges involving the use of such improvements.

(6) *Cooperative agreements.* A licensee or permittee may enter into a cooperative agreement with the District Manager for the construction and maintenance of range improvements on the Federal range. Failure of the licensee or permittee to comply with the terms of such an agreement within a reasonable time as allowed by the District Manager may result in cancellation of the license or permit as provided in § 4115.2–1(d).

(7) *Applications for lands containing range improvements; compensation; reservation.* Public lands embraced in a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, or other public land laws, as specified in § 4111.4.

(i) When the disposal application covers land upon which range improvements have been placed pursuant to a permit authorized under section 4 of the act, the owner thereof may be required to remove the improvements; or if the improvements are of a permanent nature, the land applicant may be required to agree in writing to compensate the licensee, permittee, or other owner of such improvements located on the lands applied for an amount to be mutually agreed upon, or, if the parties are unable to agree, then in the amount and within the time for payment as determined by the District Manager in accordance with the applicable procedure under subparagraph (5) of this paragraph.

(ii) (*a*) When the disposal application covers public land upon which range improvements have been placed by the United States, or pursuant to a cooperative agreement heretofore or hereafter entered into between the Bureau and the licensee, permittee, and/or other cooperators, the disposal application will be referred by the land office manager to the District Manager for determination as to whether it may be allowed, not withstanding such improvements, and, if so, whether with or without a reservation. If the application is to be allowed without a reservation of the improvements, the applicant may be required to agree in writing to compensate for the loss of such improvements in the amounts to be mutually agreed upon and payable separately to the Bureau and to the cooperators. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. In the event of disagreement, the District Manager shall determine the total amount of compensation due, as provided in subparagraph (5) of this paragraph, and the time for payment. Such amount shall then be payable separately to the Bureau and to the cooperators entitled thereto, in proportion to the amount or value of their respective contributions in money, material, or labor, to the total cost of the improvement, as made by them under the original cooperative agreement as specified by the District Manager.

(*b*) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the District Manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Board of Land Appeals, in accordance with Department Hearings and Appeals Procedures contained in Part 4 of this title.

(iii) Under the act of July 9, 1942, as amended (43 U.S.C. sec. 315q), the holder of a grazing license or permit shall be compensated for the losses sustained by reason of cancellation of or prevention of use of authorized grazing privileges resulting from the use of lands embraced in such license or permit for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the Federal department or agency making such use. Such payment shall be deemed payment in full for such losses.

(b) *Contributions for administration, protection, and improvement of public lands.* The District Manager may accept contributions under section 9 of the act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction in the States.

(1) Any individual, association, corporation, grazing district advisory board, State or local body or private group, may enter into an agreement with the District Manager with respect to such contribution. Where the contribution is to include money, the contributor should execute the appropriate form as requested by the District Manager.

(2) Contributions may be conditioned upon their use for specific projects or in specific localities.

(3) The District Manager may authorize refund of any amounts deposited in excess of the contributor's proper share of the expense incident to the purpose for which the contribution was made.

§ 4115.2–6 Pledge of licenses and permits as security loans.

(a) A license or permit may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the licensee's or permittee's livestock operations. Before making a loan, a lending agency may obtain from the District Manager a written statement concerning the status of the grazing license or permit and other pertinent information relating thereto. A service charge cf $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) A borrower-permittee desiring an extension of the term of his permit may file a request therefor, in writing, with the District Manager, setting forth the name of the lending agency, purpose and amount of loan, and the need for the extension of the permit term. When it appears that such extension will be in accordance with applicable law and regulation and not contrary to the public interest, the District Manager, in his discretion, may extend the permit for a period not to exceed 10 years from the date of the loan, subject to the rules and regulations then in force and to such additional terms and conditions as the District Manager may provide. The provisions of this paragraph shall nct be applicable to grazing licenses which are issued annually on a temporary basis prior to the issuance of term permits.

(c) If the base property to which the grazing privileges on the Federal range covered by the pledged license or permit are attached as a grazing unit is acquired by the lending agency through foreclosure or otherwise, such agency, or purchasers, lessees, or occupants of the property authorized by such agency, if qualified, may apply to be recognized as the successor licensee, or permittee. If in selling the property the lending agency takes back a mortgage on the base property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files with the District Manager notice that it has made a loan and has accepted a grazing license or permit as security therefor in conformity with the provisions of this section, the District Manager as a matter of cooperation will keep such agency advised of any adverse action affecting the license or permit, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the District Manager or the Bureau or any of its employees.

Group 9200—Protection

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

§ 9239.3-2 Inside grazing districts.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule.

(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the District manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the District manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of this part or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the District manager he will close the case; if satisfactory showing is not made within the time allowed, the violations alleged in the notice will be deemed to have been wilful and the District manager will notify the State Director thereof for further action under paragraph (e) of this section.

(b) *Violations clearly wilful; special circumstances.* Whenever it appears to the district manager that a violation is clearly wilful, grossly negligent, or repeated, or when the public health, safety, or interest requires, or when disciplinary action is advisable, the district manager will refer the matter directly to the State Director for further action under paragraph (c) or (e) of this section, whichever is appropriate.

(c) *Unlawful grazing on the Federal range; determination of damages; removal of livestock; impoundment.* (1) Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice on his lien with the District manager will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(2) Where the owner of the trespassing livestock, or his representative, is known, the district manager shall make a determination of the damage to the Federal range and other property of the United States and shall make a demand for payment upon the alleged violator, setting forth the foregoing values including the value of the forage consumed. Where the trespass grazing is not deemed to be clearly wilful the forage value shall be computed at the rate of $2 per animal unit month, or at the commercial rate if such rate is the higher; if the district manager deems the trespass grazing to be clearly wilful, grossly negligent, or repeated he shall compute the forage value at $4 per animal unit month, or at twice the commercial rate if such amount is the higher.

(3) In any case where neither the owner of the trespassing livestock, or his representative, is known, or where conservation of the Federal range and of the forage thereon requires it, the district manager, when so authorized by written order of the State Director, may take steps to remove the trespassing livestock by such methods and by such means not inconsistent with legislation which prohibits the use of airborne or motor-driven vehicles in the gathering of horses or burros, as may be necessary, and to dispose of them by sale or otherwise within not less than five (5) days after public notice of his intention to make such disposition, subject to the right of any owner or registered lienholder of such trespassing livestock to redeem the livestock within such nondisposal period upon payment of:

(i) The damage to the Federal range and other property of the United States.

(ii) The cost of such impoundment and removal.

(iii) The value of any forage consumed as determined in accordance with subparagraph (2) of this paragraph.

(4) If the amounts found to be due the United States in accordance with subparagraph (3), subdivisions (i), (ii), and (iii) of this paragraph are contested by the owner of the livestock, his representative, or lienholder, the trespassing livestock may be redeemed by the posting of a cash or corporate surety bond in lieu of immediate payment. Such bond will be adequate to insure full satisfaction of the claims made. A hearing will then be scheduled before an examiner of the Bureau of Land Management. The hearing will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence will be confined to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the

United States as a result of said trespass. The examiner will render a written decision assessing the amounts due.

(5) Where conservation of the Federal range and the forage thereon requires it, the State Director may temporarily close a grazing district or any portion thereof, to grazing by any class of livestock to be specified in such order. Notice of the order shall be published in a local newspaper and shall be posted at the County Courthouse of the County in which the closed area lies. The order shall require all owners of livestock affected thereby, to remove such livestock from the area within not less than five days from date of publication of the notice. Thereafter the District manager shall proceed to impound, remove, and dispose of, in the most humane manner in accordance with the provisions of this paragraph any such livestock trespassing or grazing in violation of the closing order.

(d) *Amicable settlement of civil cases involving unauthorized use of the Federal range or damage to Federal property.* Offers of settlement for the value of the forage consumed in trespass as determined in accordance with paragraph (c) (2) of this section and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provisions of the act or of the Federal Range Code for Grazing Districts in the amount of $2,000 or less may be accepted by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for the consumed forage and damage involved until finally accepted by the district manager or the State Director. Satisfaction of civil liability tdoes not relieve the alleged violator of any criminal liability under Federal law. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Director that disciplinary action is advisable because of a wilful, grossly negligent, or repeated violation, he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit and the section or sections of the Federal Range Code for Grazing Districts, or of the Act alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the value of the forage consumed, as determined in accordance with paragraph (c)(2) of this section. The notice will cite the license or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license, permit or base property qualifications should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

(2) The hearing upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, including the value of any forage consumed, due the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages, including the value of any forage consumed, as determined in accordance with paragraph (c)(2) of this section, and directing the district manager to suspend, reduce, or revoke the license, permit, or base property qualifications or to deny renewal, if the facts so warrant.

(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a willful or wanton violation of any provision of this part or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the District manager may refuse to issue or renew a license or permit, or the State Director may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of this subpart or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Board of Land Appeals of any matter under this § 9239.3–2, shall be made in accordance with § 4.470 and Department Hearings and Appeals Procedures contained in Part 4 of this title.

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS AND EXCLUSIVE OF ALASKA); GENERAL

Subpart 4120—Grazing Administration (Outside Grazing Districts and Exclusive of Alaska); General

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Subpart 4120—Grazing Administration (Outside Grazing Districts and Exclusive of Alaska); General

§ 4120.1 Authority.

(a) Section 15 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1275, as amended, 43 U.S.C. 315m) vests discretionary authority in the Secretary of the Interior to lease for grazing purposes vacant, unappropriated, and unreserved public lands in the continental United States, exclusive of Alaska, which are not within established grazing districts.

(b) Section 4 of the O&C Act of August 28, 1937 (50 Stat. 875; 43 U.S.C. 1181d) vests in the Secretary of the Interior discretionary authority to lease for grazing purposes any revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in the State of Oregon, hereafter referred to as O&C lands, which may be so used without interfering with the production of timber or other purposes specified in section 1 of the Act, and to formulate rules and regulations for the use, protection, improvement, and rehabilitation of such grazing lands.

(c) The Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986 as amended; 43 U.S.C. 1411–1418) expressly authorizes the Secretary of the Interior to determine which of the lands exclusively administered by him through the Bureau of Land Management are suitable for retention and management under the principles of multiple use and sustained yield. Section 5 of the Act (78 Stat. 987; 43 U.S.C. 1415) defines multiple use and sustained yield.

§ 4120.2 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized agent.

(b) "Director" means the Director of the Bureau of Land Management or his authorized agent.

(c) "State Director" means the supervisory Bureau of Land Management official for the state in which the particular range lies, or his authorized agent.

(d) "Authorized Officer" means the Bureau of Land Management District Manager or Area Manager, to whom has been delegated the authority to take action.

(e) "District Office" means the Office of the Bureau of Land Management having direct management responsibility and administrative jurisdiction over the specific public lands involved.

(f) "Animal unit month" means the amount of forage necessary for the sustenance of one cow, or its equivalent for a period of 1 month.

(g) "Grazing capacity" means the total animal unit months of forage available from a tract or tracts of forage land during a given period.

(h) "Management area" means a designated tract or geographic area of land capable of being properly managed as a unit for multiple-use to ensure a sustained yield of forage without jeopardy to other resources or uses of the land. Such a management area may require joint use by two or more lessees.

(i) "Allotment management plan" means a program of action designed to reach specific management goals.

(j) "Grazing system" means a specified sequence of livestock grazing by designated area to accomplish management objectives.

(k) "Preference land" means the privately owned or controlled land upon which the issuance of a grazing lease is based.

(l) "Contiguous land" means land that borders upon or touches upon public land.

Subpart 4121—Awards of Grazing Leases

§ 4121.1 Qualifications of applicants.

§ 4121.1–1 Minimum qualification requirements.

An applicant for a grazing lease is qualified if:

(a) He is a person engaged in the livestock business, has a need for the grazing use of the land, and is a citizen of the United States or;

(b) It is a group or association authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, all members of which are qualified under paragraph (a) of this section, provided that the agreement or articles of association under which the association has been formed are approved by the State Director, or;

(c) It is a corporation, the controlling interest in which is vested in persons qualified under paragraph (a) of this section and which is authorized to do business under the laws of the State in which grazing privileges sought are to be exercised: *Provided,* That the articles of incorporation have been approved by the Authorized Officer.

§ 4121.1–2 Effect of transfer arising through operation of law.

The acquisition of rights in preference land by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding lease, or preclude the renewal of a lease based upon such land, for a period of 2 years after such acquisition. Upon the failure of such person to qualify within the 2-year period, the lease will be subject to cancellation in accordance with § 4125.1–1(h).

§ 4121.2 Adjudication of applications for grazing leases.

§ 4121.2–1 Minimum requirements, rating and classification of lease land.

(a) *Land resource consideration.* The Authorized Officer will determine the availability of public land for grazing leases and the amount of forage available for use by livestock in conjunction with considerations of forage reservations for watershed protection, wildlife, and other multiple uses.

(b) *Grazing capacity, seasons of use, and maximum annual period of use.* The Authorized Officer will establish the grazing capacity, determine the kind and class of livestock use to be proper for each management area and classify each area for the proper seasons of use and for the maximum period of time for which the lessee will be allowed to use the leased land therein during any one year, except that where the leased land consists chiefly of isolated or fragmented tracts of land which are not proposed for long-term retention and management, the Authorized Officer may establish the grazing capacity only.

(c) *Applicants.* Grazing leases may be issued to qualified applicants to the extent that public land is available in the following order and amounts:

(1) To applicants who are the owners, lessees, or other lawful occupants of contiguous private lands to the extent necessary to permit proper use of such contiguous lands. When the public land consists of an isolated or disconnected tract embracing 760 acres or less, owners, lessees, or other lawful occupants of lands contiguous thereto or cornering thereon shall have a preference right to lease the whole of such tract, upon terms and conditions prescribed by the Secretary: *Provided,* That the preference right must be asserted during a period of 90 days after such tract is offered for lease.

(2) To applicants owning, leasing, or lawfully occupying noncontiguous lands to the extent necessary to permit the proper use of such noncontiguous lands.

(3) To other applicants.

(d) *Conflicting applications.* (1) When more than one qualified applicant applies for the same public land and it appears that a division of the area may be made and will not result in improper land use, the Authorized Officer will allow the applicants an opportunity, within a specified time limit which he shall set, to agree to a division of the lands. A division of the lands may be made either by agreement between the conflicting applicants which is acceptable to the Authorized Officer, or by determination of the Authorized Officer where no acceptable agreement is reached. However, where it appears that a division of the land would result in improper land use, or where proper land use management will be advanced thereby, the Authorized Officer may require that joint use be made of the management area.

(2) The Authorized Officer will allocate the use of the public land on the basis of any or all of the following factors: (i) Historical use, (ii) proper range management and use of water for livestock, (iii) proper use of the preference lands, (iv) general needs of the applicants, (v) topography, (vi) public ingress and egress across preference lands to public lands under application[1] (where access is not presently available), and (vii) other land use requirements.

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[1] Where the United States obtains such a right-of-way, it will assume responsibility therefor to the full extent authorized by law.

§ 4121.2–2 Leases of withdrawn or reserved lands, preference right leases for lands restored from withdrawal.

(a) The Authorized Officer may issue grazing leases for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[2] if the use of the land for grazing is consistent with the purposes of the withdrawal. Lands included in stock driveway and public water reserve withdrawals may be leased in accordance with subpart 2311 of this chapter. Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed for the protection and use of the land for the purpose for which it was withdrawn or reserved.

(b) Where public lands are restored from a withdrawal and the Authorized Officer determines that a grazing lease for the lands may be issued, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the land immediately prior to their restoration, shall have a superior preference right to lease the restored public lands previously used by him. The preference right must be asserted by an application for a grazing lease (see § 4125.1–1(a)(1)), and must be filed within 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior grazing lease, license, permit or other authority upon which the superior preference claim is based.

§ 4121.3 Adjustments of grazing use.

§ 4121.3–2 Increases.

Increases in grazing capacity, when determined by the Authorized Officer, will be apportioned in a manner that will assist in the stabilization of the livestock operations after consideration of other land uses.

§ 4121.3–3 Decreases.

(a) Downward adjustments in authorized grazing use may be imposed during the term of a grazing lease where, for example, the lease erroneously includes lands not subject to lease, or authorizes use in excess of the grazing capacity of the leased land, or where a downward adjustment is required to facilitate other proper multiple uses on the area, or similar situations.

(b) Adjustments to balance authorized use with the proper stocking rate of the management area will be apportioned equitably or as agreed to among the lessees and the Authorized Officer. Such adjustments may be made by authorizing fewer livestock, or a shorter grazing season, or by both methods as determined by the Authorized Officer.

(c) The Authorized Officer will notify each affected lessee by certified mail of his decision to make an adjustment in authorized use to reach the proper stocking rate of any leased area. The notice will state the manner in which the adjustment is to be made and will inform the lessee of his right of appeal in accordance with **Part 4 of this title.**
If no appeal is filed within the time allowed, the adjustment will be made in accordance with the decision and no further appeal will be allowed. If a timely appeal is filed, the adjustment under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the final decision will be applied to its full extent for the grazing season immediately following the effective date of the decision.

(d) Public lands under a grazing lease issued pursuant to this part are subject to classification, withdrawal, or other disposal under the Taylor Grazing Act, the O&C Act, or other applicable public land laws. Reasonable notice of a pending or proposed classification, withdrawal or disposal which might result in a diminution of the area of the leased land will be given to the lessee.

Subpart 4122—Management Practices

§ 4122.1 Management considerations.

§ 4122.1–1 Multiple use.

All use and management practices, include grazing and the issuance of grazing leases, shall be in conformance with the concepts of multiple use and sustained yield (see 43 CFR 2400.0–5 (o) and (p)). Any public lands leased under the regulations of this part which are suitable for multiple use shall be managed for multiple use to the fullest extent possible, including provision of adequate access for the various multiple users. The Authorized Officer will negotiate for such access with the appropriate applicant(s) or lessee(s), utilizing Department of the Interior easement or acquisition procedures. Should negotiations prove ineffective, the United States will acquire the necessary access by appropriate legal procedures.

§ 4122.1–2 Areas of limited multiple use values.

On areas of public land with limited multiple use values the Authorized Officer may issue leases based on grazing capacity of the area only, or may include livestock numbers and season and time of use. Grazing leases based on the criteria of this section are usually for isolated and fragmented tracts of public land. However, the multiple use values involved, not size of the public land area, will be the determining factor.

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[2] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of Feb. 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with principles of section 15 leases, under authority of subsection (I) of section 4, Act of Dec. 5, 1924 (43 Stat. 703, 43 U.S.C. sec. 501). Those lands withdrawn for reclamation purposes which are not subject to the cooperative agreement of Feb. 28, 1945, will upon restoration from the reclamation withdrawal, become subject to the provisions of paragraph (b) of this section.

§ 4122.1–3 Areas of important multiple use values.

(a) On areas of public land with important multiple use values in addition to livestock grazing or where the primary use is for sustained livestock grazing, the Authorized Officer may, before the grazing lease is issued, or where an existing lease provides for the issuance of an allotment management plan, develop in cooperation with the lease applicant or lessee an allotment management plan. Such plan shall be incorporated into the lease as a part of the terms and conditions of the lease. The plan shall provide for the proper use and conservation of the public lands, at the same time providing for the lessee the maximum possible operations flexibility. The management plan will identify objectives for the allotment, a grazing system and procedures for evaluation of management.

(b) In the absence of mutual agreement between the lessee and the Authorized Officer on an allotment management plan, the Authorized Officer may, in lieu of such plan, stipulate as a condition of the lease grazing system requirements necessary to assure proper management of the public land and its resources. In such cases the Authorized Officer may issue short-term leases until such time as he determines that the grazing system requirements are adequate to assure proper multiple use management of the public land.

§ 4122.2 Designations of grazing areas for exclusive use by specified classes of animals.

When necessary for the proper use or orderly administration of a lease area, the Authorized Officer may designate certain areas for use exclusively by a certain kind or class of livestock or wildlife.

§ 4122.3 General rules of the range.

The acts prohibited and rules of fair range practice as detailed in § 4112.3–1 and § 4112.3–2 of this chapter shall apply to all leases issued under the regulations in Part 4120.

Subpart 4123—Supervision and Inspection

§ 4123.1 Procedures for enforcement of rules and regulations.

A grazing lease may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the grazing lease, or for a violation of the Taylor Grazing Act or of the O&C Act or of any of the provisions of this Part. (See § 9239.3–1 of this chapter for detailed regulations). The lease of public lands for livestock grazing under these regulations in no way limits the Bureau's authority to protect the lands against unauthorized use or occupancy.

Subpart 4124—Local Associations

§ 4124.1 Local associations of stockmen.

Grazing associations formed by lessees will be recognized in accordance with regulations detailed in § 4114.4.

Subpart 4125—Records and Administrative Procedures

§ 4125.1 Procedures.

§ 4125.1–1 Leasing procedures; requirements and conditions.

(a) *Filing and action on lease applications.* (1) An application for a grazing lease shall be executed on a form approved by the Director and filed in the District Office of the Bureau of Land Management having management responsibility over the public lands applied for in the application. Proof of ownership or control of contiguous lands may be required by the Authorized Officer where the applicant seeks to assert a preference right.

(2) A service fee of $10 will be charged for all applications to lease public lands including initial applications and those made pursuant to assignments and consolidations. However, no fee will be charged for consolidations requested by the Authorized Officer or for a regular renewal of an existing lease.

(3) Applications to lease lands included in existing grazing leases, including lease renewals, must be filed not less than 30 days nor more than 90 days prior to the expiration of the current lease. An application not filed within this period may be rejected by the Authorized Officer as not timely filed. Applications for lands not under lease may be filed at any time.

(4) A timely filed application for renewal of an existing grazing lease does not confer on the lessee any right to a renewal but will authorize the continued grazing use of the lands by the lessee in accordance with the provisions of the existing lease pending final action on the application for renewal. The fee for such extended use shall be consistent with the then current fee schedule.

(5) An application for a grazing lease must describe the lands applied for by one of the following methods: (i) By legal subdivisions, or (ii) by metes and bounds description, or (iii) by designated management area.

(6) An application for a grazing lease may include O&C lands or public lands or combinations thereof.

(b) *No right is conferred by application prior to lease.* Since the issuance of a grazing lease is discretionary, the filing of an application for lands not then under lease does not create any right in the applicant to use the lands applied for pending the issuance of a grazing lease.

(c) *Action on defective and nonallowable applications.* (1) The Authorized Officer may require any defects in an application be corrected or additional information to be furnished. The Authorized Officer may reject any application if the applicant fails to correct defects in the application or fails to provide the additional information within the time allowed, which period shall not be less than fifteen (15) days from the date of receipt by the applicant of notice of such defects or required information.

(2) The Authorized Officer shall reject the application if the land applied for (i) is in an allowed entry, (ii) is otherwise appropriated or reserved and not subject to lease under the Taylor Grazing Act or the O&C Act, (iii) is not public land, (iv) is under existing grazing lease, or (v) is of such character that livestock grazing would be detrimental to the resources or other uses of the land.

(d) *Consolidations.* A consolidation of leases held by a lessee may be requested by the lessee on a renewal application or may be required by the Authorized Officer on his own motion. The term of the consolidated lease shall be determined through negotiation between the lessee and the Authorized Officer.

(e) *Protests and appeals*—(1) *Protests.* A protest against the approval of an application for a lease should be filed in the same office where the application for a grazing lease was filed; it should describe the lands involved, contain a complete disclosure of all facts upon which the protest is based, and be accompanied by evidence of service on the applicant of a copy of the protest. The Authorized Officer will consider the protest, and will serve a copy of his decision on the affected parties in person or by certified mail, and will advise the protestant and other parties of their right to appeal.

(2) *Appeal by applicant.* The lease will be executed by the Authorized Officer and transmitted to the lessee only after final action is taken on any protest or appeal which may have been filed. The applicant's signature to the lease shall constitute his acceptance of the lease as executed by the Authorized Officer. Nonacceptance of the lease does not prejudice the applicant's right to appeal.

(f) *Additional requirements and stipulations.* In addition to the provisions set forth in the standard Grazing Lease Form, the lease will provide for the multiple use requirements of the area, the number of livestock to be grazed, proper grazing seasons, allotment management plan, grazing system, reservation for authorized trailing, and any other conditions or requirements which the Authorized Officer may deem necessary and proper, except as provided under §§ 4121.2–1(b), 4122.1–2, and 4122.1–3.

(g) *Subleases.* No part of the lease land may be subleased by the lessee. The grazing on the lease area of livestock not owned or controlled by the lessee with or without the lessee's consent is prohibited.

(h) *Cancellation or reduction of leases; show cause.* Leases are subject to cancellation or reduction for the lessee's failure to comply with the terms of the lease or the provisions of this part of the regulations, or in any case that a lease confers use in excess of that properly allowable. In any such case the Authorized Officer will notify the lessee that the lease is being held for cancellation or reduction in whole or in part, and will allow the lessee fifteen (15) days from receipt of the notice within which to show cause why such action should not be taken. The notice will fully set forth the reasons for the proposed action, specifically referring to the pertinent provisions of the regulations, and will be served on the lessee personally or by certified mail. The Authorized Officer will consider any cause shown and, if not satisfied as to its sufficiency, or if no cause is shown, he will notify the lessee personally or by certified mail that the lease has been cancelled or reduced as the case may be. Such decision is subject to appeal.

(i) *Terms and conditions.* The issuance and continued effectiveness of all grazing leases will be subject to the following terms and conditions.

(1) A grazing lease will authorize grazing use not in excess of the grazing capacity available for use by livestock as determined by the Authorized Officer in accordance with § 4121.2–1(b).

(2) Grazing leases will provide for the grazing of livestock on the leased land only during that part or parts of the year for which the area has been classified as proper for use, except as provided in § 4121.2–1(b).

(3) Upon the diminution of the public land used under any grazing lease due to withdrawal, appropriation, selection, or otherwise, the lease will be adjusted proportionately to the reduced grazing capacity and the grazing fee will be adjusted accordingly commencing with the ensuing lease year.

(4) The grazing lease will be terminated in whole or in part because of loss of control by the lessee of non-Federal lands that have been recognized as the basis for a grazing lease.

(5) The area of the leased land may be reduced if it is determined that the land is required for the protection of forest plantations or sources of community water supply; or for recreation facilities, wildlife habitat, stock driveways, roads, trails, townsites; or for other public purposes. When it is determined by the Authorized Officer that the leased land is excessive to the lessee's need or that the lessee is not making substantial use of the leased land, the Authorized Officer may cancel the lease, reduce the acreage of the grazing lease, or reduce the grazing use allowed in accordance with the provisions of § 4125.1–1(h). In the case of any such acreage reduction a proportionate fee adjustment will be made. If the entire grazing lease is cancelled, the Director may refund any portion of the grazing fees paid for the cancelled lease term.

(6) The Authorized Officer may establish the size and boundaries of a grazing lease area to facilitate the proper and effective management of the resources. In so doing, he will give consideration to seasons of use, topography, and establishment of systems of grazing and any other pertinent factors. He may determine that two or more applicants shall be authorized to use the public land within a management area.

(7) The Authorized Officer may make adjustments in grazing leases at any time when necessary to comply with these regulations for the public lands.

(8) If necessary to rehabilitate the vegetative resources on the public land, the Authorized Officer may temporarily close the leased land to grazing or reduce livestock use whenever vegetal cover is depleted due to drought, epidemic, fire or any other cause, or for rehabilitation of the area. Such action will not exclude the closed area from the grazing lease.

(9) Authorized grazing use of the leased land may be adjusted by the Authorized Officer to conform to needed refinements in the allotment management plan as a result of more accurate determinations of grazing capacity, season and area of use, class of livestock, etc. Proportionate adjustment will be made in the annual grazing fee for the subsequent grazing season.

(10) The issuance of a grazing lease does not alter or restrict the authorized public use of the leased land including, but not limited to, hunting, fishing, camping, or hiking on such lands in accordance with the laws of the United States or of the State in which the lands are located, nor may the lessee interfere in any manner with the proper exercise of such rights. Neither shall the lessee maintain locked gates, signs, or other devices which prevent or interfere with public use of the leased land. Nor shall the lessee restrict or limit prospecting, locating, developing, mining, or patenting the mineral resources in the public land; miners, prospectors, and mineral lessees of the United States and all other authorized persons shall be entitled to enter the leased land for all lawful purposes.

(11) The Authorized Officer may require the lessee, as a condition to the granting and continued effectiveness of grazing leases, to fence or to contribute an equitable share to the cost of fencing the allotted areas and the maintenance of such fences.

(j) *Change in grazing seasons.* Any lessee who desires to use the leased land for a period or periods other than those authorized by his lease may, upon written approval of the Authorized Officer and prior to his annual billing notice, be allowed to use the amount of his authorized grazing use during any other period of time for which the lease area is classified as proper for use: *Provided*:

(1) Adjustment in season, time, or numbers does not result in an increase in the number of animal unit months utilized;

(2) Such use will not be detrimental to the resources of the leased area; and

(3) Such use will not adversely affect other lessees.

(k) *Interest of Members of Congress prohibited.* No Member of or delegate to Congress shall be admitted to any share or part of any grazing lease issued or to derive any benefit to arise therefrom (41 U.S.C. sec. 22; 18 U.S.C. sec. 431–433).

(l) *Exchange-of-use agreements.* The Authorized Officer may enter into an exchange-of-use agreement with any applicant having ownership or control of non-Federal land interspersed with and normally grazed in conjunction with the surrounding public land. The grazing use authorized, will be without payment of fees, and will not exceed the grazing capacity of such non-Federal land.

(m) *Fees for grazing leases and crossing permits*—(1) *Lease rates.* Each holder of a grazing lease will be charged annual grazing fees for the animal unit months (AUM's) authorized by the grazing lease, at a rate per animal unit month (AUM). All grazing fee billings shall be issued in accordance with the rates prescribed in subdivision (ii) of this subparagraph. All livestock six (6) months of age or over allowed on the leased area will be considered as a part of the total number for which a lease has been issued. No fees will be charged for livestock under 6 months of age.

(i) A minimum annual charge of $10 will be made on all leases.

(ii) The rate or rates per AUM for the fee year, beginning March 1 and ending the last day of February, will be established by the Director, and notice thereof shall be published in the FEDERAL REGISTER. The rate or rates will become effective as of the date of such publication and will be applied to all billing notices issued thereafter.

(2) *Crossing permits.* Upon application filed with the Authorized Officer by any person showing the necessity for crossing the public lands with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of 1 cent per head per day for cattle, 2 cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited that no substantial amount of forage will be consumed in transit.

(3) *Payment of rental fees and effect of failure to pay.* No grazing lease or renewal thereof shall be executed by the Authorized Officer until payment of all fees due the United States under the regulations in this part has been made. The first grazing fee payment must be made within 15 days of receipt of billing; if not paid within that time, the lease shall not be issued by the Authorized Officer. Upon timely payment of the first grazing fee payment, the lease will be executed and forwarded to the lessee. Subsequent annual grazing fee payments are due the United States upon receipt of the billing notice and are payable in advance of the first grazing period for

the full amount as indicated on the fee notice. No lease shall be effective to authorize grazing use thereunder until such advance payment has been made. A lease may be canceled pursuant to § 4125.1–1 (h) for failure to make timely payment.

(4) *Refunds.* No refunds of grazing fees properly paid in accordance with the regulations in this part and the terms of the grazing lease will be made because of the lessee's failure to make full grazing use as authorized by the lease. However, during periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of livestock disease during the life of the grazing lease, the Director on proper application may remit, refund, reduce in whole or in part, or postpone the payment of grazing fees for such period of depletion or general epidemic as he may determine. No part of the grazing fee paid will be refunded because of cancellation, relinquishment, or assignment, except as provided in § 4125.1–1(i) (3), (5), (8), and (9).

(n) *Period of lease.* A grazing lease or lease renewal may be issued for any period not in excess of 10 years and may be limited by the Authorized Officer to the term of a lease or control of lands that have been recognized as the basis for the grazing lease.

§ 4125.1–2 Assignment and relinquishment of grazing lease.

(a) *Assignment of grazing lease.* The lessee may assign a grazing lease only with the consent of the Authorized Officer; provided that the assignee has control of preference lands. The Authorized Officer will require the assignee to furnish proof of ownership or control of preference lands. The proposed assignment must be made on a form approved by the Director and must be filed with the Authorized Officer within 90 days from date of its execution. It must contain all the terms and conditions agreed upon between the parties and will be made effective only for the unexpired period of the assignor's lease. The assignment, properly executed and signed by the assignor, and the new application signed by the assignee will constitute the assignee's acceptance of the terms of the grazing lease. No assignment will be recognized or confer on the assignee any right to use the leased area until approved by the Authorized Officer. Advance grazing fees paid by the assignor may be credited to the assignee. All cooperative agreements and permits to construct or maintain range improvements on the leased land must be assigned at the time of the grazing lease assignment.

(b) *Relinquishment of grazing lease.* Upon written request, the Authorized Officer may accept a grazing lease relinquishment, in whole or in part, provided that all fees and charges then due have been paid.

§ 4125.1–4 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the leased lands*—(1) *Qualifications of applicant for range improvement permit.* An applicant for a permit to construct or maintain range improvements, or to use and maintain range improvements constructed and owned by a prior occupant of the leased land, must be qualified under § 4121.1–1 and hold a valid lease.

(2) *Applications.* Applications for permits must be approved prior to construction. Applications for permits must be filed with the Authorized Officer on a form approved by the Director. Construction of range improvements without an approved permit may result in cancellation of the grazing lease as provided in § 4125.1–1(h).

(3) *Appeals.* The Authorized Officer will act on the application and such action shall be final unless the applicant appeals.

(4) *Assignments.* Assignments of range improvement permits must be be filed with the Authorized Officer on a form approved by the Director and are not effective until approved by the Authorized Officer.

(5) *Permit standards.* The Authorized Officer will specify the minimum Bureau of Land Management standards and design for all range improvements. Failure to comply with the standards and design may result in cancellation of the range improvement permit and/or the grazing lease as provided in § 4125.1–1(h).

(6) *Cooperative agreements.* A lessee may enter into a cooperative agreement with the Authorized Officer to construct and maintain range improvements upon the leased land. Failure to comply with the terms of such an agreement within a reasonable time, as allowed by the Authorized Officer, may result in the cancellation of the agreement and/or the grazing lease as provided in § 4125.1–1(h). A cooperative agreement for range improvements shall be made on a form approved by the Director.

(7) *Removal of improvements; compensation for loss of improvements.* (i) When a grazing lease expires or is terminated, the Authorized Officer may require an applicant for a subsequent lease to agree to compensate the prior lessee for the current value of his share of the cost of authorized permanent improvements placed on the leased land. The prior lessee must file a written application for compensation within 30 days after the date of termination or expiration of his lease or the date of the final decision terminating it. The amount of compensation shall be determined in accordance with § 4125.1–4(a)(8)(i). The failure of the new lessee to pay the prior lessee in accordance with such agreement shall be cause for cancellation of the new grazing lease.

(ii) The leasee will be allowed ninety (90) days from the date of expiration or termination of the grazing lease within which to remove improvements not disposed of in the manner set forth in subdivision (i) of this subparagraph; if not removed or otherwise disposed of within the said period or any extension thereof granted by the Authorized Officer, such improvements shall become the property of the United States. No improvements may be removed if the lessee is in default with respect to the grazing lease.

(8) *Leased land subject to disposition; compensation for loss of improvements* (i) Ordinarily, before an application for disposal of leased lands under the public land laws is allowed, the applicant must agree to compensate the lessee or other party for any authorized range improvements in which the lessee or other party has a financial investment. If the parties are unable to agree to the amount, manner, and time for compensation for such improvements, such matters shall be determined by the Authorized Officer. The failure of the applicant to comply with the agreement or the conditions fixed by the Authorized Officer shall be cause for cancellation of any right or interest in the land acquired by the applicant by reason of the allowance of the application. If improvements have been constructed in whole or in part with Federal funds, are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), the application may be allowed in the discretion of the Authorized Officer without compensation to the United States for its share of the value of the improvements. In such cases, the Authorized Officer shall determine whether the grazing improvements are needed by the United States and whether the probable salvage value is sufficient to warrant removal of the salvageable materials.

(b) *Contributions for administration, protection, and improvement of public lands.* The Authorized Officer may accept contributions, made under section 9 of the Taylor Grazing Act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction.

(1) Any individual, association, corporation, State or local body or private group, may enter into an agreement with the Authorized Officer with respect to such contribution.

§ 4125.1–5 Pledge of leases as security for loans.

(a) A grazing lease may be pledged as security for a loan from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may obtain from the Authorized Officer a written statement concerning the status of the grazing lease and related information. A service charge of $10 will be made for searching the records, except that Federal and State lending agencies shall be exempt from such charge.

(b) A borrower-lessee desiring an extension of the grazing lease term may file a request therefor with the Authorized Officer, setting forth the name of the lending agency, purpose and amount of the loan, and the need for an extension of the grazing lease. If the Authorized Officer determines that an extension will not conflict with the applicable laws and is not contrary to the public interest, he may issue a new grazing lease for a period up to 10 years from the date of the loan but not to exceed the period of the loan.

(c) If the preference land of a lessee is acquired by a lending agency through foreclosure or otherwise, the agency, its grantees and lessees, or parties authorized by it to occupy the preference lands, may, if qualified, file an application for the issuance of a new grazing lease. If, in selling the property, the lending agency takes back the mortgage on the property, the agency will receive the same administrative consideration as in the case of an original loan.

(d) Where a lending agency files notice with the Authorized Officer that it has made a loan and has accepted a grazing lease as security, such agency will be advised of any adverse action taken affecting the lease. The failure of the Bureau of Land Management to give timely notice of any such adverse action shall impose no liability or obligation on the Bureau of Land Management or any of its employees.

SUBCHAPTER I—TECHNICAL SERVICES (9000)

Group 9200—Protection

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

§ 9239.3 Grazing.

§ 9239.3–1 Outside grazing districts.

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this subpart or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts.

(b) A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated shall be in default and shall be subject to the provisions of § 4125.1-1(h) this chapter. In addition he may be subject to trespass action in accordance with the practices and procedures in §§ 9239.3–2(a), 9239.3–2(c) (1), (2), (3), (4), 9239.3–2(d), and 9239.3–2(g) of this chapter, modified so far as practicable and necessary to include Federal land outside of established grazing districts.

(c) When the alleged trespasser is not a lessee of lands under the regulations of this subpart the signing officer may take action against the trespasser in accordance with the practices and procedures in §§ 9239.3–2(a), 9239.3–2(c) (1), (2), (3), (4), 9239.3–2(d), and 9239.3–2(g) of this chapter modified so far as practicable and necessary to include lands subject to lease under the provisions of this subpart or within a stock driveway.

This Circular replaces and revokes Circular 2266.

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Circular No. 2236

Regulations pertaining to:

GRAZING ADMINISTRATION (ALASKA)

LEASES AND PERMITS

43 CFR 4130

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

NOVEMBER 1, 1967

Form 4–1429
(December 1958)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

GUIDE TO FREQUENTLY USED LEGAL CITATIONS

SYMBOL	EXAMPLE	EXPLANATION	
CFR	43 CFR 161.5 (a)	CODE OF FEDERAL REGULATIONS *† Title 43, Section 161.5 (a)	Current Federal Regulations
Fed.	198 Fed. 125 (1912)	FEDERAL REPORTER * Volume 198, page 125 (Decision rendered in 1912)	Decisions of the United States District Courts and the United States Courts of Appeals
F.2d	101 F.2d 85 (1939)	FEDERAL REPORTER, Second Series * Volume 101, page 85	
F. Supp.	48 F. Supp. 9 (1942)	FEDERAL SUPPLEMENT * Volume 48, page 9	
F.R.	23 F.R. 8609 (November 4, 1958)	FEDERAL REGISTER * Volume 23, page 8609	Executive Department Notices, Regulations, etc., as issued
I.D.	63 I.D. 82 (1956)	DECISIONS OF THE DEPARTMENT OF THE INTERIOR (Beginning with bound Volume 53) † Volume 63, page 82	
L.D.	36 L.D. 455 (1908)	DECISIONS OF THE DEPARTMENT OF THE INTERIOR (Bound Volumes 1–52) † Volume 36, page 455	
R.S.	R.S. 2478	REVISED STATUTES OF THE UNITED STATES * Section 2478	Acts of Congress, Presidential Proclamations, etc.
Stat.	68 Stat. 868	UNITED STATES STATUTES–AT–LARGE *† Volume 68, page 868	
U.S.	357 U.S. 275 (1958)	UNITED STATES REPORTS * Volume 357, page 275	Decisions of the United States Supreme Court
U.S.C.	30 U.S.C. 226	UNITED STATES CODE *† Title 30, Section 226	Official publication of current laws of the United States
U.S.C.A.	18 U.S.C.A. 1860	UNITED STATES CODE ANNOTATED * Title 18, Section 1860	Private publication of current laws of the United States
A–	A–25748 (January 10, 1950)	DECISIONS OF THE DEPARTMENT OF THE INTERIOR (Unbound, numbered consecutively)	
M–	M–36528 (September 24, 1958)	MEMORANDUM OPINIONS OF THE SOLICITOR OF THE DEPARTMENT OF THE INTERIOR (Unbound, numbered consecutively)	

* Generally available for reference in most sizeable state, county, or law libraries.

† Generally available for reference in State and Land Offices of the Bureau of Land Management and the Offices of the Field and Regional Solicitors of the Department of the Interior.

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GPO 868171

Subpart 4131—Grazing Leases

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Subpart 4131—Grazing Leases

§ 4131.0-2 Objectives.

The beneficial utilization of the public lands in Alaska for the purpose of livestock grazing shall be conducted in such manner as may be considered necessary and consistent with the purposes of the act but shall be subordinated to the development of their mineral resources, to their use for agriculture, to the protection, development and utilization of their forests, and to the protection, development and utilization of such other resources as may be of greater benefit to the public.

§ 4131.0–3 Authority.

The act of March 4, 1927 (44 Stat. 1452; 48 U.S.C. 471, 471a–471o) authorizes the Secretary of the Interior to establish grazing districts upon any public lands in Alaska, surveyed or unsurveyed, outside of the Aleutian Islands Reservation, outside of national forests and other reservations administered by the Secretary of Agriculture and outside of national parks and monuments, and to lease such lands for the grazing of livestock thereon. Section 7 of the act provides that all leases shall be made for a term of 20 years, except where the Secretary of the Interior determines that the land may be required for other than grazing purposes within the period of 10 years, or where the applicant desires a shorter term, and in such cases leases may be made for a shorter period.

§ 4131.0–5 Definitions.

As used in this subpart:

(a) "Secretary" means Secretary of the Interior;

(b) "Director" means Director, Bureau of Land Management;

(c) "Authorized officer" or "manager" means the designated official of the Bureau of Land Management, in whose district the lands involved are situated, who has been delegated the authority to issue grazing leases;

(d) "The act" means the act of March 4, 1927 (44 Stat. 1452, 48 U.S.C. secs. 471, 471a–471o);

(e) "Person" means individual, partnership, corporation or association;

(f) "Native" means any member of the aboriginal races inhabiting Alaska, of whole or not less than half blood;

(g) "District" means any grazing district established under the act.

(h) "Animal unit month" means the forage consumed or grazing privileges represented by the grazing of one cow or its equivalent for one month. For the purpose of this definition, one cow shall be considered the equivalent of one horse, or five sheep or five goats.

§ 4131.1 Conditions.

§ 4131.1–1 Grazing districts.

(a) *Establishment.* Pursuant to the act, grazing districts are hereby established, the boundaries of which shall be co-extensive with the boundaries of the public land districts in Alaska.

(b) *Leases on acreage basis.* Grazing leases will be granted only for such areas as may be deemed adequate and usable according to the needs of the lessee. Leases will provide for grazing on a definite area, and on an acreage basis, except where peculiar local conditions or the difficulties of administration make more practicable a lease based on the number of livestock to be grazed.

§ 4131.1–2 Lands subject to lease.

Vacant, unreserved, and unappropriated public lands are subject to lease. Where these lands are embraced within the natural grazing grounds or routes of migration of animals such as caribou or moose, or have other important values for wildlife, the lands may be leased, in the discretion of the manager, subject to such special terms and conditions as may be determined. Except as to those reservations described in § 4131.0–3 public lands within the boundaries of a grazing district which have been withdrawn for any purpose may be leased with the prior consent of the Department or agency having administrative jurisdiction thereof and subject to such additional terms and conditions as such Department or agency may impose.

§ 4131.1–3 Qualifications of applicants.

An applicant for a grazing lease is qualified if the applicant:

(a) Is a citizen of the United States, or

(b) Has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen, or a valid petition for naturalization, or

(c) Is a group, association, or corporation organized under the laws of the United States or of any State or Territory thereof, authorized to conduct business in Alaska, and the controlling interest in which is vested in persons who would be qualified under either paragraph (a) or (b) of this section.

§ 4131.1–4 No right acquired by applicant prior to lease.

The filing of an application will not segregate the land applied for from application by other persons for a grazing lease, or from other disposition under the public land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for pending the issuance of a lease. Any such unauthorized use constitutes a trespass.[3]

§ 4131.2 Procedures.

§ 4131.2–1 Applicants.

(a) *Classes of applicants and preference.* Applicants for grazing leases shall be given preference in the following order:

(1) Natives.
(2) Bona fide settlers.
(3) Other qualified applicants.

(b) *Assertion of preference rights.* Any person claiming a preference right to a lease under paragraph (a) of this section must furnish with the application required under § 4131.2–2(a) a statement setting forth the facts on which such claim is made.

§ 4131.2–2 Application for lease.

(a) *Form used.* An application for grazing lease must be executed in duplicate on a form approved by the Director, and filed with the manager.

(b) *Schedule of operations.* The application must be accompanied by a schedule of the applicant's proposed annual program to develop and increase the number of livestock which will be grazed on the land, and showing the applicant's need for all the land applied for, to provide forage for the maximum number of livestock which the applicant intends to graze thereon.

(c) *Financial responsibility.* The applicant, upon request by the manager, must also furnish evidence of his financial responsibility consisting of a showing that he has the financial means or has made arrangements with an established financial institution to provide the capital necessary to commence and maintain his proposed schedule of operations.

§ 4131.2–3 Maximum number of stock.

The lease will indicate the maximum number of stock which may be grazed on the leased area, based on the condition of the range and its accessibility for summer and winter feeding. The manager may adjust the maximum number from time to time as the condition of the range may warrant.

§ 4131.2–4 Annual rental.

(a) *Amount.* Unless otherwise provided, each lessee shall pay to the Bureau of Land Management such rental per acre, per head, or per animal unit month, as may be determined to be a fair charge for grazing of livestock on the leased land. The rental under any grazing lease may be adjusted every 3 years. The date for making the annual payment will be specified in the lease. If the rental is to be paid according to the number of animals grazed, no charge will be made for the natural increase of grazing animals until the beginning of the following lease year.

(b) *Adjustment or waiver.* The manager, if he determines such action to be in the public interest by reason of (1) depletion or destruction of the range by any cause beyond the control of the lessee, or (2) calamity or disease causing wholesale destruction of or injury to livestock, may grant an extension of time for making payment, or reduce or waive the grazing fee under a lease so affected. An application for the desired relief should be filed with the manager and should state all pertinent details and itemize the losses sustained.

(c) *Payment.* The first rental payment required and the return of the proposed lease duly executed by the prospective lessee shall be made within 30 days of receipt of the lease form by the prospective lessee; if the rental is not paid or the lease is not returned within the prescribed time, the offer shall be null and void and of no effect, and all rights of the prospective lessee thereunder or under the application upon which it is based shall be considered as terminated. Subsequent rental payments for succeeding lease periods are payable in advance. In the event such payment is not received in the proper office by the last day of the current lease period or within the time prescribed in the billing notice whichever is the later, the case shall be considered canceled and all rights terminated thereunder as of the end of such current lease period; except the lease shall not terminate if the lessee submits payment to the proper office within a grace period of sixty days following the last day of the current lease period together with a showing satisfactory to the authorized office that the delay in rental payment was for unavoidable reasons and that termination of the lease would cause undue hardship to the lessee.

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[3] It is unlawful for any person to graze any class of livestock on the public lands in grazing districts in Alaska, except under authority of a lease or permit granted under the act. Any person who wilfully grazes livestock in such areas without such authority shall, upon conviction, be punished by a fine of not more than $500. (Sec. 12, act of March 4, 1927; 48 U.S.C. 471k, and notice approved March 7, 1929.)

§ 4131.2–5 Reduction in excessive leased area.

Whenever, in the opinion of the manager, the leased land is excessive for the number of livestock to be grazed by the lessee, the manager may, after 30 days' notice to the lessee, reduce the lease area to the extent necessary, and the annual rental, if on an acreage basis, shall be reduced proportionately, effective at the beginning of the next lease year.

§ 4131.2–6 Free grazing permits.

Any person may file application in duplicate on a form approved by the Director, for a permit to graze, free of charge, not to exceed the number of livestock whose products are consumed or whose work is directly and exclusively used by the applicant or his family, for a term of not more than one year.

§ 4131.2–7 Leases.

(a) *Issuance of lease.* If the application is complete and it is determined that a lease should be issued, the manager will prepare a proposed lease, with necessary copies, on a form approved by the Director, for execution by the applicant. The forms, signed by the applicant, must be forwarded promptly to the manager, together with any required rental payment. The lease will be dated as of January 1 of the year in which it is issued, and the required rental for the first year will be adjusted on a pro rata monthly basis to cover that portion of the year subsequent to the lease issuance.

(b) *Report of grazing operations.* Before April 1 of the second lease year and each lease year thereafter, the lessee shall file with the manager a report, in duplicate, on a form approved by the Director, of his grazing operations during the preceeding year.

(c) *Assignments.* No part of the leased land may be subleased. Any proposed assignment of a lease, in whole or in part, must be filed in duplicate with the authorized officer within 90 days of its execution. Assignments will be executed on a form approved by the Director and must be accompanied by the application on a form approved by the Director, executed in duplicate, together with the same showing by the assignee as to qualifications and stock development schedule as would be required of applicants for a new lease, including financial responsibility when specifically requested by the manager. The assignee's acceptance of the lease offered pursuant to the grazing lease assignment shall constitute his acceptance of the lease terms. No assignment will be recognized nor will it confer on the assignee any rights to the leased area until a lease therefor is issued to him.

(d) *Renewals.* An application for renewal of a grazing lease should be executed and filed in duplicate on a form approved by the Director not less than four months but not more than eight months before the expiration date of the lease term. The renewal lease, if issued, will contain such terms and conditions as the manager may determine.

(e) *Rights reserved.* Grazing leases under this Subpart 4131 shall be subordinated to and shall be subject to modification or reduction by the manager to the extent necessary to permit:

(1) The protection, development and utilization, under applicable laws and regulations, of the mineral, timber, water, and other resources on or in the leased lands, including their use for agriculture.

(2) The allowance of applications for and the acquisition of homesites, easements, permits, leases, or other rights and uses, pursuant to applicable public land laws, where the same are in the public interest or will not unduly interfere with the use of the area for grazing purposes.

(3) The temporary closing of portions of the leased area to grazing whenever, because of improper handling of the stock, overgrazing, fire or other cause, such action is deemed necessary to restore the range to its normal condition.

(f) *Restrictions.* No lessee may so enclose roads, trails or other highways as to disturb public travel thereon, nor interfere with existing communication lines or other improvements on the leased area; he shall not prevent legal hunting, fishing or trapping on the land, or the ingress of miners, mineral prospectors and other persons entitled to enter the area for lawful purposes.

(g) *Termination.* A lease may be surrendered by the lessee upon prior written notice filed with the manager, effective upon the date indicated in such notice but no less than 30 days from the date of filing, provided the lessee has complied with the terms and conditions of the lease and has paid all charges due thereunder.

(h) *Cancellation.* A lease may be cancelled by the manager if the lease was issued improperly through error with respect to a material fact or facts, or if the lessee shall fail to comply with any of the provisions of the lease or of this Subpart 4131. No lease will be cancelled for default in complying with the provisions of the lease or of this Subpart 4131 until the lessee has been notified in writing of the nature of the default and has been afforded an opportunity to show why the lease should not be cancelled.

§ 4131.2–8 Stock driveways; crossing permits; quarantine regulations.

(a) *Stock driveways.* The manager may establish stock driveways for the regular crossing of livestock across public lands, in such form and manner as he may determine.

(b) *Crossing permits.* A permit for the crossing of livestock on a stock driveway or other public lands, including lands under grazing lease, may be issued free of charge, upon the filing of an application on a form approved by the Director, in duplicate, with the authorized officer at least 30 days prior to the date the crossing is to begin.

(c) *Quarantine regulations.* Persons driving or transporting stock across any public lands must comply with the quarantine and other sanitary laws prescribed by the Territorial or other proper authorities.

§ 4131.2–9 Range improvements.

(a) *Permits for construction and maintenance.* Application for a permit to construct and maintain range improvements should be filed with the authorized officer in duplicate on a form approved by the Director. The lessee, upon obtaining an executed permit from the authorized officer, may construct, maintain, and utilize authorized fences, buildings, corrals, reservoirs, wells, or other improvements needed for the exercise of the grazing privileges under the lease. The lessee will be required to comply with the laws of the State of Alaska with respect to the construction and maintenance of fences, but any such fence shall be constructed to permit the ingress and egress of miners, prospectors for minerals, and other persons entitled to enter such area for lawful purposes. The lessee, upon written approval by the authorized officer, may improve by seeding or reseeding within the lease area and may harvest hay or ensilage from such seeded or reseeded areas provided that the forage so produced is used primarily as feed for the lessee's livestock. The authorized officer may approve the assignment of range improvements upon receipt of an application for such assignment on a form approved by the Director.

(b) *Removal of improvements and personal property.* (1) Improvements, fixtures, or personal property (other than livestock) may not be removed from the lands unless all moneys due the United States under the lease have been paid.

(2) If all moneys due have been paid and the lessee, on or before the termination of his lease in whole or in part for any reason, notifies the manager of his determination to leave on the land involved in such termination improvements, the construction or maintenance of which has been authorized, no other person shall use or occupy, under any permit, lease or entry under any public land law, the land on which such improvements are located, until there has been paid to the person entitled thereto the value of such improvements. If the interested parties are unable to reach an agreement as to such value, the amount may be fixed by the manager. All such agreements, to be effective, must be approved by the manager. The failure of the subsequent permittee, lessee, or entryman to pay the former lessee in accordance with such agreement will be just cause for the cancellation of the permit, lease, or entry.

(3) In the absence of a notice by the lessee in accordance with subparagraph (2) of this paragraph the lessee shall, within 90 days from the date of expiration or termination of the lease, and if all charges due thereunder have been paid, remove all personal property belonging to him, together with any fence, building, corral, or other removable range

improvements owned by him. All such property which is not removed within the time allowed shall thereupon become the property of the United States.

§ 4131.3 Disposition of leased lands.

§ 4131.3–1 Settlement, location, and acquisition.

Lands leased under the act are not subject to settlement, location, and acquisition under the nonmineral public land laws applicable to Alaska unless and until the authorized officer of the Bureau of Land Management determines that the grazing lease should be cancelled or reduced in order to permit, in the public interest and without undue interference with the grazing operations, the appropriate development and utilization of the lands (see § 4131.2–7(e)) and that the lands are suitable for and otherwise subject to the intended settlement, location, entry or acquisition. An application on the appropriate form or a notice on a form approved by the Director if applicable to the class of entry contemplated, will be accepted and treated as a petition for determination. Upon such determination and after not less than 30 days' notice thereof to the lessee the grazing lease may be cancelled or reduced to permit the settlement, location, entry or other acquisition of the lands so eliminated from the lease, and the petitioner will be accorded a preference right to settle upon or enter the lands in accordance with the determination.

§ 4131.3–2 Mineral prospecting, location and purchase.

Unless otherwise withdrawn therefrom, lands leased under the act are subject to disposition under the mineral leasing laws and to mineral prospecting, location, and purchase under the mining laws, in accordance with the applicable regulations of Group 3400 of this chapter.

§ 4131.5 Protests, hearings and appeals.

§ 4131.5–1 Protests.

Protests against an application for a lease should be filed in duplicate, with the manager, contain a complete disclosure of all facts upon which the protest is based, and describe the lands involved in such protest; and should be accompanied by evidence of service of a copy of the protest upon the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protests is filed, the protest should be accompanied by an application for a grazing lease.

§ 4131.5–2 Hearings; appeals.

(a) Any lessee of or applicant for grazing privileges may procure a review of any action or decision of the authorized officer by filing with such officer an application for a hearing, stating the nature of the action or decision complained of and the grounds of complaint. The filing of any such application and the conduct of the proceedings before an examiner shall be governed by Subpart 1852 of this chapter pertaining to contests.

(b) An appeal may be taken from any decision of the authorized officer to the Director of the Bureau of Land Management, and from any decision of the Director to the Secretary of the Interior, pursuant to Part 1840 of this chapter.

Subpart 4132—Grazing Permits (Reindeer)

§ 4132.0–3 Authority.

Section 12 of the Act of September 1, 1937 (50 Stat. 902; 48 U.S.C. 250k), authorizes the Secretary of the Interior to promulgate such rules and regulations as, in his judgment, are necessary to carry into effect the provisions of 48 U.S.C. 250–250n.

§ 4132.0–5 Definitions.

(a) "Reindeer" includes reindeer and such caribou as have been introduced into animal husbandry or have actually joined reindeer herds and the increase thereof.

(b) "Natives" include the native Indians, Eskimos, and Aleuts of whole or part blood inhabiting Alaska at the time of the Treaty of Cession of Alaska to the United States and their descendants of whole or part blood, together with the Indians and Eskimos who, since the year 1867 and prior to September 1, 1937, have migrated into Alaska from the Dominion of Canada, and their descendants of whole or part blood.

(c) "Bureau" means Bureau of Land Management.

(d) "Director" means Director, Bureau of Land Management.

(e) "Authorized Officer" means the Bureau official who has been authorized to issue a reindeer grazing permit.

(f) "The Act" means the Act of September 1, 1937 (50 Stat. 902; 48 U.S.C. 250, 250a–250p).

§ 4132.1 Conditions.

§ 4132.1–1 Lands subject to grazing permit.

Vacant and unreserved and unappropriated public lands are subject to inclusion in a reindeer grazing permit. Where these lands are within the natural migration routes of caribou, or when they have other important wildlife values, the lands may be included in a permit, at the discretion of the authorized officer after consultation with the Bureau of Sport Fisheries and Wildlife, subject to such special terms and conditions as may be jointly agreed upon. Public lands which have been withdrawn for any purpose may also be included in a grazing permit with the prior consent of the Department or agency having administrative jurisdiction thereof, and subject to such additional terms and conditions as such Department or agency may impose.

§ 4132.1–2 Qualifications of applicants.

An applicant is qualified if he is a native or group, association or corporation of natives as defined by the Act of September 1, 1937, organized under the laws of the United States or the State of Alaska.

§ 4132.1–3 No rights acquired by applicant prior to issuance of grazing permit.

The filing of an application will not segregate the land applied for from application by other persons for a grazing permit, or from other disposition under the public land laws. As the issuance of a grazing permit is discretionary, the filing of an application will not create a right for such a permit, or to the use of the lands applied for pending the issuance of a grazing permit.

§ 4132.1–4 Rights reserved; public land laws applicable.

(a) Grazing permits under this Subpart 4132 shall be subordinated to higher uses and subject to modification or reduction by the authorized officer to the extent necessary to allow:

(1) The protection, development and utilization, under applicable laws and regulations, of the mineral, timber, water and other resources on or in the lands included in the grazing permit, including their use for agriculture.

(2) The allowance of applications for and the acquisition of homesites, easements, permits, leases, or other rights and uses pursuant to applicable public land laws.

(3) The temporary closing of portions of the permitted area to grazing whenever, because of improper handling of the reindeer, overgrazing, fire, or other cause, such action is deemed necessary to restore the range to its normal condition.

(b) No permittee may so enclose roads, trails, or highways as to disturb public travel thereon, nor interfere with existing communication lines or other improvements on the permitted area; he shall not prevent legal hunting, fishing or trapping on the land, or ingress of miners, mineral prospectors and other persons entitled to enter the area for lawful purposes.

(c) Persons using public lands for grazing of reindeer or for driving of reindeer across such lands must comply with applicable State and Federal laws relative to livestock quarantine and sanitation.

§ 4132.1–5 Location, settlement, entry, and other disposition of lands included in grazing permit; notice to permittee of disposition and reduction of permitted area.

(a) Lands included in grazing permits under the act are subject to settlement, location, and acquisition under the non-mineral public land laws applicable to the State of Alaska.

(b) Upon settlement, location or entry of any lands included within a reindeer grazing permit, the permittee shall be notified of the settlement, location or entry, and the permitted area shall be reduced by the area involved in the settlement, location or entry.

(c) Unless otherwise withdrawn therefrom lands included in grazing permits under the act are subject to disposition under the mineral leasing laws and to mineral prospecting, location, and purchase under the mining laws, in accordance with the applicable regulations of Group 3400 of this chapter.

§ 4132.2 Procedures.

§ 4132.2–1 Application for grazing permit.

(a) *Form used.* An application for a grazing permit must be executed in duplicate on a form approved by the Director and filed in the Bureau office which has jurisdiction over lands applied for.

(b) *Bureau of Indian Affairs certification.* A certification of reindeer allotment to the applicant, signed by the authorized Bureau of Indian Affairs officer, must accompany the application if the applicant is to receive a herd from the Government.

(c) *Source of reindeer other than Government.* If reindeer are to be obtained from a source other than the Government, the applicant should state the source and show evidence of his purchase or option to purchase.

(d) *Listing of improvements.* With the initial application for any grazing permit issued under this Subpart 4132, the applicant must list by location and description the improvements found in the area under application which are owned by the applicant. Such statement of ownership will be verified by a Bureau of Indian Affairs official prior to submitting it to the Bureau of Land Management. Such existing improvements will be permitted by the terms of the initial grazing permit. Improvements to be constructed subsequent to the issuance of the initial grazing permit must be under permit in accordance with § 4132.2–9.

§ 4132.2–2. Filing fee; grazing fee.

A filing fee of $10 must accompany each application for a reindeer grazing permit or application for renewal thereof. No grazing fee will be charged.

§ 4132.2–3 Term of grazing permit; renewals.

(a) Reindeer grazing permits shall be issued for a maximum term of 10 years, except where the applicant desires a shorter term, or where the authorized officer determines that a shorter period will be in the public interest.

(b) Application for renewal of a grazing permit shall be made not less than four months or more than eight months before the expiration date of the permit. The authorized officer may at his discretion offer the permittee a renewed grazing permit containing such terms, conditions, and of such duration as he determines to be in the public interest.

§ 4132.2–4 Area of use and maximum number of reindeer.

(a) Permits will restrict grazing use to a definitely described area. Grazing permits will be granted only for such areas as may be deemed adequate and usable according to the needs of the permittee.

(b) The grazing permit will indicate the maximum number of reindeer which may be grazed on the permitted area, based on range conditions, and will be subject to adjustment as the condition of the range indicates.

§ 4132.2–5 Adjustment of grazing permit area.

The permitted area may be reduced at any time, after not less than 30 days notice to the permittee, when in the opinion of the authorized officer the area is excessive for the number of reindeer grazed thereon. The permit may be increased by the authorized officer on his own motion or upon request of the permittee, when in the opinion of the authorized officer the area is insufficient for the number of reindeer grazed thereon. The permittee shall have opportunity within such notice period to show cause why the area included in the grazing permit should not be adjusted.

§ 4132.2–6 Report of grazing operations; assignments allowed.

(a) Before April 1 of the second permit year and each year thereafter, the permittee shall file with the authorized officer a report in duplicate of his grazing operations during the preceding year on an approved form.

(b) No part of the land included in the permit may be subleased. Proposed assignments of a permit, in whole or in part, must be filed in duplicate with the authorized officer within 90 days from the date of its execution. Such assignments must contain all of the terms and conditions agreed upon by the parties thereto, accompanied by the same showing by the assignee as to qualifications and a reindeer allotment as is required of applicants for a permit, and by the assignee's statement agreeing to be bound by the provisions of the permit. No assignment shall be effective until approved by the authorized officer.

§ 4132.2–7 Termination of grazing permit; cancellation.

(a) A grazing permit may be surrendered by the permittee upon prior written notice filed with the authorized officer, effective upon the date indicated in such notice, but not less than 30 days from the date of filing.

(b) A grazing permit may be cancelled by the authorized officer if the permit was issued improperly through error with respect to a material fact or facts, or if the permittee shall fail to comply with any of the provisions of the permit or of this Subpart 4132. No permit shall be cancelled for default in complying with the provisions of the permit or of this Subpart 4132 until the permittee has been notified in writing of the nature of the default and has been afforded an opportunity of not less than 30 days to show why the permit should not be cancelled.

§ 4132.2–8 Crossing permits.

A permit for the crossing of reindeer over public lands, including lands under grazing permit, may be issued free of charge, upon application filed with the authorized officer at least 30 days prior to the date the crossing is to begin. The application must show the number of reindeer to be driven, date of starting, approximate period of time required, and the land to be traversed.

§ 4132.2–9 Permits for construction and maintenance of improvements; removal.

(a) Application for a permit to construct and maintain range improvements should be filed, in duplicate, with the authorized officer on an approved form. The grazing permittee, upon obtaining a permit from the authorized officer, may construct, maintain and utilize any fence, building, corral, reservoir, well, or other improvement needed for the exercise of the grazing privileges under the grazing permit. The permittee will be required to comply with the laws of the State of Alaska with respect to the construction and maintenance of fences, but any such fence shall be constructed to permit the ingress and egress of miners, prospectors for minerals, and other persons entitled to enter such area for lawful purposes.

(b) The permittee, within 90 days from the date of expiration or termination of the grazing permit, or within any extension of such period, shall be allowed to remove all personal property belonging to him, together with any fence, building, corral, or other removable range improvements owned by him. All such property which is not removed within the time allowed shall thereupon become the property of the United States.

§ 4132.3 Protests and appeals.

(a) Protests against an application for a grazing permit shall be filed in duplicate, with the authorized officer; contain a complete disclosure of all facts upon which the protest is based; and describe the lands involved in such protests. It shall be accompanied by evidence of service of a copy of the protest upon the applicant. If the protestant desires to obtain a grazing permit for all or part of the land embraced in the application against which the protest is filed, the protest shall be accompanied by an application for a grazing permit.

(b) An appeal may be taken from any decision of the authorized officer to the Director, and from any decision of the Director to the Secretary, pursuant to Appeals and Contests (Parts 1840 and 1850 of this chapter).

§ 4132.4 Trespass.

(a) Any use of the Federal lands for reindeer grazing purposes, unless authorized by a valid permit issued in accordance with the regulations in this Subpart 4132 is unlawful and is prohibited.

(b) Any person who wilfully violates any of the rules and regulations in this Subpart 4132 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by imprisonment for not more than one year, or by a fine of not more than $500.

This Circular replaces Circulars 1929, 2006, 2074, 2129 and that portion of 2178 relating to Part 4130.

GPO 839-432

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